United States Court of Appeals

for the Second Circuit

APPENDIX

76-7012

B

P/S

United States Court of Appeals

FOR THE SECOND CIRCUIT

RIDEL C. REVILLA,

Plaintiff-Appellant,

—against—

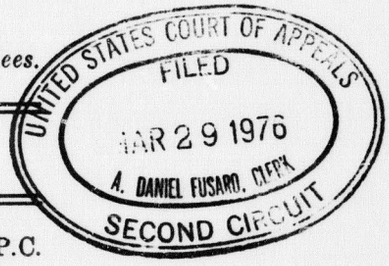
AMERICAN EXPORT ISBRANDTSEN LINES, INC.,

Defendant and Third-Party Plaintiff-Appellee,

—against—

PITTSTON STEVEDORING CORP., and HOFFMAN RIGGING AND CRANE CO.,

Third-Party Defendants-Appellees.



APPENDIX

DI COSTANZO, KLONSKY & CUTRONA, P.C.
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Brooklyn, N.Y. 11201
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HILL, BETTS AND NASH
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466-4900

PAGINATION AS IN ORIGINAL COPY

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1A

CIVIL DOCKET

UNITED STATES DISTRICT COURT

JUDGE FRANKEL 70 CIV. 2582

Jury Demand

Filed 6-15-70

Levet, J.

Form No. 106 Rev.

TITLE OF CASE

ATTORNEYS

RIDEL C. REVILLA

vs.

AMERICAN EXPORT ISBRANDTSEN LINES INC.

Deft & 3rd.pty.plff.

Fittston Stevedoring Corp.

Third-Pty. deft.

HOFFMAN RIGGING & CRANE Co.

THIRD-PARTY. DEFT.

For plaintiff:
DI COSTANZO KLONSKY & CULTRONA
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Brooklyn N.Y. 11201

For defendant:
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New York, N.Y. 10004 (DI 4-6600)

Fogarty, Nielsen, McLaughlin & Semel
10 Rockefeller Plaza, New York, 10020
(3rd.pty.deft.) Pl 7-6660

Hill Betts & Nash
1 World Trade Center, Suite 5215
NYC 10048 (Deft Hoffman Trucks)

STATISTICAL RECORD	COSTS	
S. 5 mailed x	Clerk	
S. 6 mailed	Marshal	
is of Action: Fer. Inj. Longshoreman 250,000.00	Docket fee	
ction arose at:	Witness fees	
	Depositions	

DATE	NAME OR RECEIPT NO.	REC.	DISB.
6/15/70	[illegible]		

COPY RECEIVED

JUN 15 1970

DI COSTANZO KLONSKY & CULTRONA, P.C.

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BEST COPY AVAILABLE

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Revilla vs. American Export Isbrandtsen Lines

DI COSTANZO, LOWRY & CONDON

70 CIV. 25

DATE	PROCEEDINGS
un 18,70	Filed complaint and issued summons.
ul 11-70	Filed summons with marshal's ret. Served American Export Isbrandtsen Lines, Inc. by Miss Murphy, on 6/23/70.
[illegible]	~~Filed Notice of Address Change of Skadden, Arps, Slate, Meagher & Flom to 919 Third Avenue, NY 10022~~
ar.27-72	Filed deft's notice to take deposition of pltff. on 4-19-72.
ar.27-72	Filed deft's ANSWER & interrogs.
r.27-72	Filed 3rd.pty.Complaint. Issued Summons.
ar. 17-72	Filed 3rd party summons with marshals return served: Pittston Stevedoring Corp on 3-30-72
ay. 4-72	Filed 3rd.pty.deft's notice to take deposition of pltff& 3rd.pty. pltff. on 5-24-72.
ay. 4-72	Filed ANSWER by 3rd.pty.deft. to 3rd.pty. complaint.
ay. 4-72	Filed 3rd.pty.deft's interrogs to pltff.
ay. 4-72	Filed 3rd.pty.deft's interrogs to 3rd.pty.pltff.
y.15-72	Filed pltff's interrogs to deft.
y.16-72	Filed deft. & 3rd.pty.pltff's ANSWER to cross-claim of 3rd.pty.deft.
y.22-72	Filed deft's & 3rd.pty.pltff's interrogs addresssed to 3rd.pty.deft.
y.23-72	Filed pltff's interrogs to 3rd.pty.deft.
n.14-72	Filed stip & order that time of deft. & 3rd.pty.pltff. to object, to interrogs of 3rd.pty.deft, is ext. from 6-5-72 to 7-3-72. So ordered. Cooper, J.
ul 11-72	Filed stipulation and order extending deft-3rd pty.pltf.'s time to object, answer,etc. the interrogs. to 7/28/72. So ordered. Brieant, J.
ul 18-72	Filed stipulation and order extending deft-3rd pty.pltf's. time to object, answer,etc. with respect to interrogs. to 8/11/72. So ordered. Brieant, J.
ul 26-72	Filed stipulation and order extending deft-3rd pty.pltf's time to object,answer or otherwise move with respect to interrogs. to 8/26/72. So ordered. Frankel, J.
ug 16-72	Filed stip & order of that time for deft-3rd pty. pltff to answer interrogatories of pltff is ext. from 8-11 to 9-8-72-So ordered-Bauman, J
[illegible]	~~Filed notice of change of address of pltf. attorney to 3rd Park Ave. NY 10022~~
g.28-72	Filed stipulation and order extending deft-3rd pty.pltf's.time to object,answer etc. to interrogatories to 9/23/72. So ordered. Bauman, J.
ep.5-72	Filed stipulation and order extending deft-3rd pty.pltf.'s time to answer interrogatories to 10/6/72. So ordered. Bauman, J.
ep.22-72	Filed consent Order that the deft be permitted to make Hoffman Rigging & Crane Co. a 3rd party defendant in this action & that said deft be permitted to file & serve a 3rd party summons & complaint upon Hoffman Rigging & Crane Co. So Ordered 9-21-72 TENNEY, J.
ep.26-72	Filed Stip & Order that the time of the deft & 3rd pty pltff to move with respect or answer interrogatories propunded by 3rd pty deft to deft &-3rd pty pltff be extended from 9-23-72 to 10-20-72. So Ordered TENNEY, J.
p.27-72	Filed deft & 3rd party pltffs complaint & issued summons. Deft & 3rd pty pltff demands trial by jury of 12.
t.17-72	Filed summons & marshal's return. deft American Export Isbrandtsen Lines Inc. served 10-11-72 by [illegible] Samuel Gordon.
v.28-72	[illegible] Stip & Order that the time of the 3rd pty deft to file an answer or otherwise move as extended to [illegible]. So Ordered 11-22-72 CRIESA, J.
.13-72	[illegible] Stip & Order that the time of the 3rd pty deft to file & answer or otherwise move as extended to [illegible]. So Ordered 12-11-72 GRIESA, J.
c.22-72	Filed 3rd Party defts answer to interrogatories.
c.22-72	Filed 3rd Party defts answer to interrogatories.
n.4-73	Filed Stip & Order extending 3rd Party Deft HOFFMAN RIGGING & CRANE Co to file an answer to the complaint, is extended to 1-15-73. So Ordered 1-4-73 GRIESA, J.

(Cont. to Pg. 2)

CIVIL DOCKET PAGE #2 JUDGE CANNELLA

DATE PROCEEDINGS—PROCEEDINGS JUDGE CANNELLA CLERK'S FEES PLAINTIFF DEFENDANT

Mar15-73	Filed ANSWER of third party deft, answering the third party complaint of the third party pltff
Mar15-73	Filed third party defts interrogatories addressed to the third party pltff.
Apr3-73	Filed third party deft Pittston Stevedoring Corp's Answer to cers claim of third party deft Hoffman Rigging and Crane Co.
Nov. 11-73	Filed 3rd pty. deft's request for documents.
7/5/74	Removed before Pollack J.
7/23/74	Set down before Pollack J.
9-13-74	Filed Consent Order to change atty for deft Hoffman Trucks, to Hill Betts & Nash.....POLLACK,J.
Sep.26-74	Filed notice of consent to chanie atty's for (Hoffman), with affds of service.
10/15/74	Put Trial before Pollack J.
11/15/74	Jan Trial before Pollack J.
May 14-75	Filed pltff's affdvt.& notice of motion for an order to permit a direct cause of action in negligence against the 3rd Pty.deft Hoffman Rigging & Crane Co. Ret.5-23-75.
May 14-75	Filed memorandum of pltff for amendment of complaint.
May 21-75	Filed dft. & third-pty pltff's affdvt. of David P.H. Watson in partial opposition to pltff's motion for permission to amend his complaint.
May 21-75	Filed memorandum of Law of deft. & third-pty pltff. in opposition to pltff's motion.
May 22-75	Filed third-pty deft. Hoffman Rigging & Crane Co. affdvt. of John F.X. McKierr in opposition to pltff's motion for an order to permit a direct cause of acti in negligence against said third-pty deft.
May 22-75	Filed supplemental memorandum on behalf of third-pty deft. Hoffman Rigging & Crane Co., in opposition to pltff's motion to amend the complaint to assert a direct claim in negligence against Hoffman
June 2-75	Filed notice that pltff. will move at the time of trial to assert a claim of negligence against the third-pty deft. Hoffman Rigging & Crane Co.
June 2-75	Filed Memorandum-Opinion #42502 and Order-- for the reasons stated, pltff's motion for an order to permit a direct cause of action against the third-pty defts., Hoffman Rigging & Crane Co., is denied. So ordered- CANNELLA, J. (m/
Sep.25-75	ACTION REASSIGNED TO LEVET,J.
Oct.17-75	Filed pltff's designation of trial counsel.
Oct.17-75	Filed 3rd.pty.deft. Hoffma Rigging & Crane Co. designation of tri counsel.

D. C. 110

Cont'd on Page #3

Civ 258 Ridel C. Revilla vs. American Export Lines, etal Civ 258

FILINGS—PROCEEDINGS	CLERK'S FEES		AMOUNT REPORTED IN EMOLUMENT RETURNS
	PLAINTIFF	DEFENDANT	
Page #3			
12-24-75 Before Levet,J. PRE-TRIAL CONFERENCE HELD.			
12-8-75 Filed Judgment: Order that deft. have judgment against pltff. dismissing the complaint, with costs to be taxed. The third action will be decided by the court. Bevet,J. Judgment Ent. Clerk. m/n Ent.12-9-75.			
01-75 Before Levet,J. Jury trial begun.			
02-75 Trial continues.			
03-75 " " & concluded. Jury verdict for deft. Court directs clerk to enter judgment in favor of the deft. together with costs.			
05-76 Filed pltff's notice of appeal to the USCA from judgment entered. against pltff. Mailed copies to Haight,Gardner,Poor & Havens,Fogarty, MCLaughlin & Semel & Hill,Betts & Nash.			

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk
By _____ Deputy Clerk

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -X

RIDEL C. REVILLA,

Plaintiff,

PLAINTIFF DEMANDS TRIAL BY JURY

-against-

AMERICAN EXPORT ISBRANDTSEN LINES, INC.,

Defendant.

- -X

Plaintiff, complaining of the defendant, by his attorneys, DI COSTANZO, KLONSKY & CUTRONA, respectfully shows to this Court and alleges:-

FIRST: That at all the times hereinafter mentioned, the plaintiff was and still is a citizen of the United States and of the State of New Jersey, and a resident of Newark, State of New Jersey.

DENIES K OR I

SECOND: Upon information and belief, that at all the times hereinafter mentioned, the defendant was a domestic corporation, duly organized and existing under and by virtue of the Laws of the State of New York, with its principal place of business located at No. 26 Broadway, in the Borough of Manhattan, City, County and State of New York.

ADMITS

THIRD: Upon information and belief, that at all the times hereinafter mentioned, the defendant was the owner of a certain vessel known as the S.S. Sea Witch.

ADMITS

FOURTH: Upon information and belief, that at all the times hereinafter mentioned, the defendant, by its agents, servants, and/or employees, managed, operated and controlled the aforesaid vessel known as the S.S. Sea Witch.

ADMITS EXCEPT

ADMITS EXCEPT

FIFTH: Upon information and belief, that at all the times hereinafter mentioned, the defendant equipped, manned and provisioned the aforesaid vessel, the S.S. Sea Witch.

ADMITS EXCEPT

SIXTH: Upon information and belief, that on and during all of the times hereinafter mentioned, the defendant reserved unto itself the supervision, direction and control of the officers and members of the crew of the aforesaid vessel, the S.S. Sea Witch.

ADMITS EXCEPT

SEVENTH: Upon information and belief, that on and during all of the times hereinafter mentioned, the defendant, by and through its agents, servants, and/or employees, reserved unto itself the care, supervision and control of the decks, gear, appurtenances, appliances and equipment aboard the aforesaid vessel, the S.S. Sea Witch.

DENIES K OR I

EIGHTH: That this Honorable Court has jurisdiction of the subject matter of this action by reason of the fact that it is predicated upon a diversity of citizenship, and upon a maritime tort, and is an action for an amount in excess of $10,000.00, exclusive of interest and costs.

ADMITS

NINTH: Upon information and belief, that on the 19th day of February, 1969, the aforesaid vessel, the S.S. Sea Witch, was moored to, at, near or alongside Berth 13, Port Newark, Newark, New Jersey.

ADMITS EXCEPT

TENTH: Upon information and belief, that at some time prior to the 19th day of February, 1969, the defendant entered into a contract with Pittston Stevedoring Corp., for the purpose of discharging and/or loading cargo from or to the aforesaid vessel, the S.S. Sea Witch.

ELEVENTH: That on the 19th day of February, 1969, the plaintiff herein, while in the employ of Pittston Stevedoring Corp., in the capacity of a longshoreman, was lawfully on and upon and aboard the aforesaid vessel, the S.S. Sea Witch, while the said vessel was moored to, at, near or alongside Berth 13, Port Newark, Newark, New Jersey.

TWELFTH: That on the 19th day of February, 1969, the plaintiff, while in the performance of his work in the capacity of a longshoreman, and while on deck at Hatch No. 2 of the aforesaid vessel, the S.S. Sea Witch, he was, through the carelessness, negligence and recklessness of the defendant, its agents, servants, and/or employees, and because of the unseaworthy condition of the vessel, caused to be precipitated from a container, as a result of which he sustained serious, devastating, disabling, permanent and painful personal injuries.

THIRTEENTH: That as a result of the personal injuries aforesaid inflicted upon the plaintiff, he was confined to a hospital for a period of time and was compelled to submit himself to medical and surgical care and attention; he was obligated to expend or become obligated for sums of money therefor; he was required to forego his usual occupation and recreation, and to suffer great pain and mental anguish, all to his damage in the sum of Two Hundred Fifty Thousand ($250,000.00) Dollars.

FOURTEENTH: That the aforesaid accident was caused without fault or want of care on the part of the plaintiff, who in nowise contributed thereto, but resulted wholly and solely by and through the carelessness, negligence and reck-

lessness of the defendant, its agents, servants, and/or employees, in that they failed and neglected to keep the aforesaid vessel, particularly Hatch No. 2 thereat, in a safe and seaworthy condition; in failing to provide the plaintiff with a reasonably safe place in which to work; in failing and neglecting to make due, timely and proper inspection of the decks, gear, appurtenances, appliances and equipment then and there being used by the plaintiff and his co-workers in the performance of the work at hand, and in failing to employ a sufficient number of experienced and skilled superiors and employees.

FIFTEENTH: That the aforesaid accident was caused by reason of the unseaworthy condition of the S.S. Sea Witch.

SIXTEENTH: That by reason of the premises, the plaintiff has been damaged in the sum of Two Hundred Fifty Thousand ($250,000.00) Dollars.

WHEREFORE, plaintiff demands judgment against the defendant in the sum of TWO HUNDRED FIFTY THOUSAND ($250,000.00) DOLLARS, together with the costs and disbursements of this action.

DI COSTANZO, KLONSKY & CUTRONA

By _____
Member of the Firm
Attorneys for Plaintiff
Office & P.O. Address
Sixty-Six Court Street
Borough of Brooklyn
City of New York 11201.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RIDEL C. REVILLA Plaintiff -against- AMERICAN EXPORT ISBRANDTSEN LINES, INC. Defendant and Third-Party Plaintiff -against- PITTSTON STEVEDORING CORP. and HOFFMAN RIGGING & CRANE CO. Third-Party Defendants.	70 CIVIL 2583 (JMC) AFFIDAVIT

STATE OF NEW YORK)
) SS: -
COUNTY OF KINGS)

PHILIP F. DI COSTANZO, being duly sworn, deposes and says:

That he is one of the attorneys for the plaintiff herein, fully familiar with all the facts, and makes this affidavit in support of a motion to permit a direct action against the third-party defendant, HOFFMAN RIGGING & CRANE CO., so that the plaintiff may be allowed his day in Court on the merits against all potential responsible parties.

The severity of the injuries sustained by the plaintiff, doing work historically performed by seamen, is expressed in a report by Dr. Harry Sherman, dated April 23, 1975, as follows:

> "DIAGNOSIS: Status following triple arthrodesis of left ankle, necessitated by comminuted fracture of left calcaneus extending into subtalar joint."
>
> "COMMENT: The accident as described above is a competent producing cause for the fracture of left calcaneus which in turn eventually

necessitated the triple arthrodesis which this patient had performed. He now presents a sensitive neuroma within the scar which requires surgical excision for relief of pain. He presents a permanently stiff and motionless left ankle joint which is the cause of a significant permanent disability of left lower extremity."

Deponent makes this formal motion pursuant to the Court's direction, after a notice to amend at the time of trial was served on the parties herein. Said notice is annexed hereto and made a part hereof, and expresses the intent of the plaintiff to move to amend the complaint at the time of trial for a direct action against the third-party defendant Hoffman Rigging & Crane Co., under and by virtue of Rule 14 (a) of the Rules of Civil Procedure, and also the authority of Wasik v. Borg, 423 F. 2d 484 (CCA 2nd, 1970), "to assert a claim of negligence against the third-party defendant Hoffman Trucks,Inc. (sued herein as Hoffman Rigging & Crane Co.) for negligence of its personnel in operating the crane involved herein."

In response, defendant Hoffman Rigging & Crane Co. by its attorneys, directed correspondence to the Court on April 29,1975, photostatic copy of which is annexed hereto. Deponent, on behalf of the plaintiff, agrees with the conditions recited in said letter, where on compliance thereto counsel for Hoffman stated "We have no objection to a formal amendment of the complaint to bring in Hoffman as an additional direct defendant."

The facts herein relate to a maritime accident while discharging containers from defendant's vessel on February 19,1969, where under conditions of danger, the plaintiff was compelled to climb atop a container, stowed two high, as one of four men attempting to secure a spreader attached to the fall of Hoffman's dock crane onto locking devices on the containers four corners. After lining up the locking devices to the corners, the plaintiff sought

sanctuary on an adjoining container. When the spreader was lifted instead of coming with the container it came loose, or was not locked in place, and thereby caused the spreader to swing out of control and strike the person of the plaintiff, to precipitate him to the deck below, a distance of approximately 16 feet. With respect to liability of Hoffman Rigging & Crane Co., the issue is whether a signal to raise was given by the gangwayman, before the spreader was secured, to determine whether the third-party defendant Hoffman Rigging & Crane Co. should be ultimately responsible in whole or in part by the negligence of its operator.

The discovery and pre-trial procedures requested by Hoffman Rigging & Crane Co. prior to trial, can be quickly done on this simple factual issue.

There may be speculation that this motion was made to prompt a jury trial against a non-diverse defendant. It is agreed that under and by virtue of 28 U.S.C. 9 (h) plaintiff will proceed in admiralty against said third-party defendant, to be tried in tandem with a jury trial against American Export-Isbrandtsen Lines,Inc., on which record the learned trial Court will resolve the issues of fact and laches as between plaintiff and Hoffman Rigging & Crane Co.

The cases in point are set forth in the memorandum of law accompanying this affidavit.

To avoid a possible miscarriage of justice, where the jury might find the shipowner initially blameless, despite its warranty of seaworthiness and its non-delegable obligation to provide a safe place to work, in this most serious case, it is respectfully urged that the learned Court grant the motion herein.

PHILIP F. DICOSTANZO

Sworn to before me
this day of
MAY,1975.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

RIDEL C. REVILLA, Plaintiff	Before: HON. RICHARD H. LEVET, D.J., and a Jury.
-against-	
AMERICAN EXPORT ISBRANTSEN LINES, INC., Defendant and Third Party Plaintiff,	70 Civ. 2583
-against-	
PITTSTON STEVEDORING CORP. and HOFFMAN RIGGING AND CRANE COMPANY, Third Party Defendant.	

21 S.D.C. S.D. Filed 1/19/76

New York, December 1, 2,3, 1975

STENOGRAPHER'S MINUTES

gwbr

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

RIDEL C. REVILLA,

Plaintiff,

-against-

AMERICAN EXPORT ISBRANDTSEN LINES, INC.,

Defendant and Third Party Plaintiff,

-against-

PITTSTON STEVEDORING CORP. and HOFFMAN RIGGING AND CRANE COMPANY,

Third Party Defendant:

70 Civ. 2583

Before:

HON. RICHARD H. LEVET,

District Judge
and a jury

New York, December 1, 1975
Room 401 - 10:10 a.m.

APPEARANCES

DI COSTANZO, KLONSKY & CUTRONA, Esqs.,
Attorneys for Plaintiff,
Robert Klonsky, Esq., of Counsel

HAIGHT, GARDNER, POOR & HAVENS, Esqs.,
Attorneys for Defendant and Third-Party Plaintiff,
David P.H. Watson, Esq.,
Vincent M. De Orchis, Esq., of Counsel

APPEARANCES
(Continued)

FOGARTY, NIELSEN, MC LAUGHLIN & SEMEL, Esqs.,
Attorneys for Third-Party Defendant,
Pittston Stevedoring Corp.,
James D. Hockett, Esq., of Counsel

HILL, BETTS & NASH, Esqs.,
Attorneys for Third-Party Defendant
Hoffman Rigging and Crane Co.,
Robert Blanc, Esq.,
Gregory W. O'Neil, Esq., of Counsel

Also Present:
Anthony R. Amarante,
Spanish Interpreter.

- - -

(Discussion off the record.)

THE COURT: It is stipulated that all the claims over by the ship against the crane operator and against the stevedore are to be tried to the court.

I think most of you are familiar with the way we operate. As most of you know, I think, we will let each counsel open very briefly, not more than five minutes for the third-party defendants. Then you may, if you want, briefly, as I say, open and you may cross examine if you think it is necessary but don't be too elaborate about it. And then on summations you may, if you wish, sum up briefly. The briefer it is I think

the better it is for perhaps all of you. And then the case on the claims over will be tried on the basis of what appears in the direct trial of plaintiff against the ship plus such other testimony and evidence as the ship or the third-party defendants may wish to put in.

Is that clear to everybody? I think most of you know about that.

Opening statement, how much do you want?

MR. KLONSKY: About ten minutes. Make it fifteen to be sure.

THE COURT: And the shipping company?

MR. WATSON: Ten minutes.

THE COURT: And the crane?

MR. BLANC: I don't think I will make any opening statement.

THE COURT: And the stevedore?

MR. HOCKETT: In the same spirit I think I will waive my opening remarks.

THE COURT: Perhaps wisdom, too.

MR. KLONSKY: May I inquire as to how many challenges we have?

THE COURT: I will come to that.

How many jurors have you got?

THE CLERK: 30 jurors, Judge.

THE COURT: Be a little restrained on your challenges. I will allow three to the plaintiff and two to each of the other parties. That is six. And we will have two alternates.

Suppose we do this: Three to the plaintiff for the ship. Are you content with two?

MR. WATSON: I think I should have three.

THE COURT: I am going to have to cut down. There is nothing to be decided really affecting the third-party defendants.

That makes ten all together, two alternates and that is twelve surplus. If you are somewhat restrained in your challenges.

Anything else? Is that agreeable to anybody?

MR. KLONSKY: It is not agreeable to me that they have so many more challenges than I have. I only have three.

THE COURT: I think it is discretionary with me, counsel.

MR. KLONSKY: Yes, except that they are not even opening to the jury.

THE COURT: One to each of the third-party defendants.

MR. KLONSKY: I don't think it will make any difference but just to be sure.

THE COURT: I don't think it will.

MR. KLONSKY: Your Honor didn't mention this is a split trial.

THE COURT: It is a split trial as usual, liability to be decided first and then damages and then the Court will take whatever testimony is necessary as to the claim over. In fact, the other day I had a case where there was such a situation, and while the jury was out, Kimball was on it for the shipping company, I forget who the lawyers were, we had a hearing going on on that claim while the jury were doing their deliberations. So if you want to be ready for that, I suggest that we try to do that. Of course, it is subject to whatever messages may come on from the jury.

If they don't ask for a reading of testimony, why, we can get some work done there.

MR. BLANC: How long do you expect to take, Mr. Klonsky, to put in the plaintiff's case?

MR. KLONSKY: How can I tell without knowing how long they will cross examine?

THE COURT: You told us substantially before -- if I had my little book here or had my senior clerk here

I would know. I don't know what it was.

MR. KLONSKY: I would say two or three days at the most.

THE COURT: As much as three?

MR. KLONSKY: It may be.

THE COURT: I don't know what you will do for three days, counsel, on liability alone.

MR. KLONSKY: There is a need for an interpreter for two of them, including the plaintiff.

THE COURT: What is it, Spanish?

MR. KLONSKY: Spanish.

THE COURT: Is he here?

MR. KLONSKY: I contacted Mr. Amarante but he will be here shortly. A case was settled.

THE COURT: You settle a case occasionally. If we didn't settle a case once in a while this courthouse would be overburdened with trials.

MR. KLONSKY: But the calendar Friday said there was another case to start today.

THE COURT: I know, but it was settled. You knew it on Wednesday, didn't you?

MR. KLONSKY: No.

THE COURT: I don't know how that happened.

MR. KLONSKY: We will get him here in time,

I am quite sure. One thing. There may be occasions when I ask the Court to allow me to sit while I read or cross examine. I have Parkinson's disease.

THE COURT: Do you want me to say anything to the jury?

MR. KLONSKY: No.

THE COURT: Then just sit down. I tried a case long ago, an antitrust case, Thurmond Arnold was there trying the case for the defendant, and he sat down all the time. Then after he had delivered the direct questions to the witness, then some other counsel took it up and ran the gauntlet for the cross examination. Then he said each time "I introduce into evidence this exhibit or that exhibit." Finally I said"No, you mean you offer in evidence, don't you, Mr. Arnold?"

"Yes, but that's what we say in Wyoming."

I said, "This is New York."

Okay, let's go.

(In open court.)

THE CLERK: For trial, Ridel C. Revilla v. American Export Isbrandtsen Lines, Inc. v. Pittston Stevedoring Company and Hoffman Rigging and Crane Company.

Plaintiff ready?

MR. KLONSKY: Ready.

THE CLERK: Defendant ready?

MR. WATSON: Ready.

THE CLERK: Third-party defendants ready?

MR. HOCKETT: Ready.

MR. BLANC: Ready.

(A jury was duly impaneled and sworn.)

(Two alternate jurors were duly impaneled and sworn.)

THE COURT: The other jurors are excused.

THE CLERK: The balance of the jury panel please return to Room 109.

THE COURT: Now a few words to those who are here to determine the verdict in this case.

As I told you before, the first period of this trial will be devoted totally to whether there is liability of this defendant shipping company to this plaintiff.

As to your instructions, I wish you would heed them. You were sworn this morning before you came up here and were placed in the box to properly and honestly answer all the questions with respect to your qualifications. That is merely in order that all parties here, particularly the plaintiff and the shipping company, however, will have an unbiased jury.

Secondly, you were questioned and I assume you answered my questions fairly and squarely.

Now, these are the things I wish you to observe. It is very important for many reasons that you properly observe these instructions.

First, do not talk to anybody whomsoever about this case.

Secondly, do not permit anyone to talk to you about the case.

Thirdly, do not talk about the case to each other until you ultimately retire to pass upon your verdict.

And lastly, keep an open mind throughout. You will hear the opening statements from the lawyers, you will hear the witnesses as they testify, you may have certain exhibits presented, you will hear the summations of

the lawyers and then the charge of the Court, but during that time please observe my instructions not to talk to anyone whatsoever about the case.

Lastly, keep an open mind until all of the processes have been accomplished.

You may retire now. There will be a short recess. The clerk will show you where to go. Leave your packages and any effects you have in the jury room.

THE CLERK: Jurors, please come this way and take all your personal effects you have with you.

(Jury leaves courtroom.)

THE COURT: There will be a short recess.

(Recess.)

THE COURT: Now, members of the jury, I want to say a few words.

We are ready for what we call opening statements by the lawyers. These, members of the jury, are expressions by each lawyer and only by the plaintiff and shipping company here now as to what the case will show or what it will not show. Obviously, whatever the lawyers say is not evidence. The evidence must come from witnesses who come up here and are sworn and are examined, or from exhibits which are marked into evidence or possibly, in some instances, from depositions or what is called examinations before trial.

gwbr

I will speak more about those if and when those excerpts are read to you.

In any event, that session, this part of the session with respect to the opening statements is helpful to the jury, I believe, and to the Court in enabling us to more readily understand what is happening.

In this instance, there will be an interpreter, I believe, for some of the witnesses.

You may proceed as attorney for the plaintiff, Mr. Klonsky.

MR. KLONSKY: May it please the Court, ladies and gentlemen of the jury: As you may have gathered from what his Honor stated earlier, we are here concerned with a maritime negligence case involving a longshoreman who was hurt on February 19, 1969, in the course of discharging containers of cargo from a ship called the SS Sea Witch.

I don't know whether you have sat on other juries, we didn't ask you that question, but, as you know, though you are the judges of the facts, his Honor is the judge of the law and you must await his charge to you to determine what law is to be put on the framework of the facts. We sue the shipowner here represented by Mr. Watson. The shipowner we contend breached its non-delegable duty to this plaintiff in failing to afford

him a safe place to work. Now, the shipowner resists our claim. We bring it in two parts, the warranty of seaworthiness and maritime negligence which his Honor will charge you is to be contrasted with any concept you may have of the law ashore.

Now, he says "I was not at fault either under the warranty of seaworthiness claim or the maritime negligence claim but if I am at fault I want to claim over against the stevedore, the plaintiff's employer, and the crane operator, for their negligence in causing and casting me into liability."

So what you have here are two trials.

THE COURT: No, only one before the jury.

MR. KLONSKY: One before the jury but they are to cross examine witnesses with respect to the claim over which his Honor is to decide. That is why they are here.

THE COURT: Don't get any idea you will cross examine witnesses other than those involved in this lawsuit against the shipping company.

MR. KLONSKY: That's right. You therefore can see that the interests of all parties other than the plaintiff is to defeat the plaintiff's claim because there would be no claim over if the plaintiff doesn't

succeed in the first instance. So you can categorize the interests of the parties by the nature of their defenses.

THE COURT: In this part of the case there are only two parties concerned for the jury to pass upon. Proceed.

MR. KLONSKY: We also have another limitation in this case. We go into liability only in the first phase and then if we find for the plaintiff you then go into damages. So we will be strictly talking about what happened on the ship. I might say to you that we have depositions taken of witnesses, we have exhibits and we have stipulations which will help the jury to come to its conclusion on facts, and this is what we contend happened on February 19, 1969, aboard the SS Sea Witch moored in Port Newark, New Jersey, between the hours of 4 and 4:30 in the afternoon.

The weather at that time was rain, sleet and snow, icy conditions on the top of the containers. There was a crane which was on a truck from the dock with a spread of bridle on the end of the boom and the cable that runs to the boom and what the men were supposed to do was to go on top of these containers, put the spreaded bridle into the locks, and then get out of the way

hopefully that nothing would swing towards them and strike them while they were working on top of an adjoining container to do this work.

They had a delay from 1 to 3:45 that afternoon because of the weather conditions. It is in the log. Without any change in weather, there was a direction to go on top of these containers, each 8-foot high, one on top of another making it 16 feet high, and to do this dangerous work, and the crane operator could not see where the plaintiff and his co-workers were on top of these containers so they had a signalman, and this signalman will testify here with respect to what he knows about this case.

In any event, the bridle without being locked in suddenly lifted, swung towards the plaintiff while he was standing on an adjoining container, struck him in his abdomen and various other parts of his body, I assume, and he fell down feet first 16 feet to the deck below. There were no lines to guide the bridle which would have kept these men away from the area of danger. If they had these tag lines at the end of bridles, they would have maneuvered this bridle from the dock or deck and didn't have to be so proximate to the area of danger. There were no lifelines, there were no safety devices, there were no nets on the slippery surface between 4 and 4:30. The

plaintiff was struck by a swinging bridle in the circumstances of danger and caused to suffer the injuries which we hope to bring to you in a later phase of this case.

In the course of this trial you will hear terminology which may not be familiar. When we talk of the bow, that is the front of the ship, and the stern is the rear. To the right is starboard, to the left is port. If you turn around and look to the rear, to the left is starboard, to the right is port. It maintains its position at all times. When we talk about a fore and aft distance it is fore and aft. When we talk about the distance from one side of the ship to the other it will be athwartship. We have hatches here. We are concerned with the No. 2 hatch, and the hatch was closed and these containers were on top of this hatch. The part that he fell down on was the top of this hatch because that is where the containers were that were yet to be discharged.

A hold is an opening in the ship in which cargo is placed and I assume there were some containers down below. But we are concerned only with the deck cargo during this time of bad weather with the ship serving its own interest in getting the cargo off as quickly as possible under unsafe conditions for this plaintiff. That is the case. We have given you an outline of the proof to

follow. If any party here opening to you promises you proof that is not forthcoming, that is for you to consider as well as if they had fulfilled their obligations to give you the facts as they are. I assure you that what I have told you will be proven. Thank you.

THE COURT: I may say that the plaintiff has the burden of proof and I will explain what that means later at the timeof the charge.

Mr. Watson then for the shipping company.

MR. WATSON: May it please the Court, Madam Forelady, ladies and gentlemen of the jury, worthy counsel:

As Mr. Klonsky has told you, I represent American Export Lines, the defendant in this case, and the only party that the plaintiff is suing. The plaintiff is only suing American Export Lines. The only issue which you have to decide is the possible liability of American Export Lines to the plaintiff.

Now just let me take a couple of minutes and set the very skeleton of what is going on here. American Export Lines was the owner of a ship called the Sea Witch and the Sea Witch is basically a cargo vessel. More particularly, the Sea Witch was a container vessel, a vessel or ship, if you want to call it that, designed to

carry containers which, of course, are in turn filled with cargo of various shapes, sizes, commodities.

A container, if you want to visualize it, looks very much like the trailer part of a trailer truck. Take the cab of a trailer truck away, take the wheels off and you are left with the thing that the cab is pulling, which is a metal container about 8 feet high, some of them are 20 feet long, some are 40 feet long, and they are about 8 feet wide. As a matter of fact, you have probably seen containers going down the Thruway because when they come off the ships they put them right on a truck bed and haul them to wherever they're going.

Now, this ship was designed to carry these big rectangular containers. The containers with which we are going to be concerned for the next few days were on top of the ship. They are not down inside the ship out of sight, they are on top of the ship, and they were two high above the deck. In other words, there is one container left lying on the deck and then another container directly on top of that, and the whole top of the ship was covered in this fashion, with two-high containers.

Now, obviously, the function of a ship like the Sea Witch is to carry containers let us say from Europe to here and from here to Europe. So when this ship came in

she was loaded with containers and the containers have to be removed and taken ashore and taken to wherever they may be going. The ship, the Sea Witch, has no way of unloading itself. It has no mechanism, no gear, which allows it to get rid of its own cargo and if nobody came in to take the cargo away the ship would just sit forever with the containers on.

So two things are done. American Export Lines hires a stevedoring company, which is Pittston Stevedoring Corporation, represented by Mr. Hockett, and that stevedoring company employs longshoremen. Those are the men who work unloading and discharging cargo. You have undoubtedly heard about longshoremen.

Mr. Revilla, the plaintiff in this action, was a longshoreman and he was an employee of Pittston. Now, in addition to that, we have to have some way of getting these containers off the ship, and for that purpose Hoffman Crane and Rigging -- I think that's the right name -- Hoffman Crane and Rigging was hired to bring a shore crane, which for purposes you might visualize as something you see alongside a building construction. It is on a truck bed, it has its own driving cab and then it has a long crane or derrick with the necessary wires and power, and the function of the derrick was to come along-

side the ship on the pier and remove these containers one by one.

In order to remove a container, and you will hear the plaintiff and I am sure his witnesses testify about this, the crane has attached to the end of its lifting wire something that we have given various names to called a bridle or frame. It is shaped exactly the way the container is. In other words, if it is a 20-foot container, the frame is 20-foot long and it is 8 feet wide. That frame is lowered on top of the particular container that you want to remove through a series of ropes, you can then lock it in on the corners, and then the function of the crane is to lift that container from where it is on the ship, presumably pivot around and put it down on the dock.

Now, in this case the plaintiff, Mr. Revilla, was working on top of the containers assisting in positioning this cradle each time a container was removed because it is not going to position itself, it has to be positioned so it is square on top of a container. At that point proper procedure would be that somebody, a longshoreman, another employee of Pittston, would give a signal to the crane operator, who is on the pier in the cab, a signal to him which says, in effect, "Okay, you can

lift it now."

And at that point the men, the longshoremen, would stand clear of the container that is going to be removed. Obviously they don't want to go up with it. They stand clear and the container would be lifted, turned, put down on the dock.

Now, in this case the plaintiff has testified on what we call an examination before trial, in other words, his testimony was taken a few years ago under oath, and that we all have in transcript form. It has all been typed up.

When the plaintiff testified then, it was his claim that the bridle or the frame was lifted by the crane before it had been locked in and that the cradle or the frame was lifted by the crane before anybody gave the crane operator a signal to lift, that it was okay to lift, and he says that because of that he was standing next to the cradle, it had not been locked in, and suddenly the cradle lifted, it spun around, hit him in the chest or the stomach and knocked him off the top of the container he was standing on, causing him to fall.

The people involved in this operation, as you will hear, were either employees of Pittston, the longshoremen, whose job it was to lock in the cradle, or one or more

employees of Hoffman Crane, whose job it was to lift the cradle and the container attached to it when they got the proper signal, and it is on this set of facts and this type of testimony that the plaintiff claims that the ship from which the container was being removed is liable to him in damages for the jury.

Now, you are not concerned, you are in no way concerned with any claim that I may have in turn against Pittston or against Hoffman. I want to make that clear. That is something that Judge Levet will decide if called upon to decide at a later date without a jury, but the testimony that goes in on the basic issue of the plaintiff against the ship of course Judge Levet will be listening to and will have that as background. But you are not concerned with that. Your only question at this point is, is the plaintiff entitled to recover from the shipping company, American Export. And I am not going to let you waste your time worrying about whether the plaintiff sustained any injuries. There is no question about that. The plaintiff sustained injured at about 4:15 or 4:30 on February 19th of 1969, I think it was, when he went over the edge and fell off a container or two containers high and landed on the deck. That isn't the issue. The issue isn't whether he was injured or not. The issue is,

is American Export Lines answerable to him in damages for what occurred or did it happen through somebody else's fault who has not been sued or did it happen for any other reason. It is the plaintiff's obligation to convince you that it was Ameican Export Lines' fault, and I think that if you listen to the testimony, listen to the fact witnesses, listen to any expert witnesses who may be called, then I think you will agree with me that the plaintiff has not sustained its burden of proof.

THE COURT: Before Mr. Klonsky calls his first witness, I want to say a few words about procedure during this trial and as it applies during any trial.

How many have sat on a jury before in a federal court? Three. How many have sat in on any jury in a state court? One.

Let me explain this. You are the sole judges of the facts. However, the Court has the burden of determining what facts may be presented to you and this may happen by presentation of questions of witnesses. One lawyer may ask a certain question and another lawyer may object to it and it is the duty of the Court to determine whether or not the witness may answer that particular question, in other words, whether a particular fact may be considered on this basic question of liability.

Call your first witness.

MR. KLONSKY: Mr. Canales.

A N G E L C A N A L E S, a witness called on behalf of the plaintiff, having been first duly sworn, testified as follows:

MR.KLONSKY: Your Honor, may I at this time for the sake of saving time offer in evidence the ship's plan?

THE COURT: No, not unless you have it first marked for identification, counsel.

MR. KLONSKY: It was marked for identification in an EBT.

THE COURT: It must be marked here.

MR. KLONSKY: I didn't know that, your Honor.

THE COURT: Now you know it.

MR. KLONSKY: I ask that it be marked.

THE COURT: Give it to the clerk. He will mark it.

xx (Plaintiff's Exhibit 1 was marked for identification.)

MR. KLONSKY: And here are the plans.

xx (Plaintiff's Exhibit 2 was marked for identification.)

THE COURT: You want to get it identified by

the witness.

MR. KLONSKY: It was furnished by the defendant. I assume they will stipulate it is correct.

THE COURT: Show it to him. Maybe he will stipulate it is correct.

MR. KLONSKY: I will ask him.

MR.WATSON: No objection, your Honor, as to either.

xx (Plaintiff's Exhibits 1 and 2 were received in evidence.)

MR. KLONSKY: With the Court's permission, may I read a portion from the ship's log?

THE COURT: Yes, if there is no objection.

MR. KLONSKY: This is the log of the SS CV Sea Witch at Port Newark, starboard side shed No. 291 on February 19, 1969, Wednesday.

At 0000 -- that's at midnight.

THE COURT: Please go slowly and speak up, counselor.

MR. KLONSKY: J.S. Taryan on duty as night mate. Lights, lines and gangway attended. Shore watchman on gangway duty.

0800, ship's off relief night mate. 0800. One gang longshoreman aboard. 0845. Commenced

discharging No. 2 deck bay. Hoffman Crane.

0900. Three men Reynolds Repair.

1145. Knock off all work for meal.

1245. One G.E.engineer aboard for tension winches.

1300 -- that's 1 o'clock in the afternoon -- one gang aboard standing by. Rain, snow.

1545 -- that's 3:45 -- one gang resumed discharging No. 2 deck.

1545, G.E. engineer ashore.

Then we turn to the left side of this page. 1630, 2-19-68, stevedore Ridel C. Revilla, age 38, Social Security number -- they gave that -- address 117 Ferry Street, Newark, New Jersey, injured this date. Man claims after hooking up container on deck which was being lifted by shore crane the container turned, man grabbed a rope on lifting grear to avoid being knocked off container. The rope was wet and the man's hand slipped off rope causing him to fall off container two high to deck. Ridel Revilla removed by ambulance to St. James Hospital.

It says: Day ends overcast, light drizzle.

Plaintiff's No. 2 is a ship's plan. One of the purposes of presenting this is to show that--

THE COURT: Just tell about the facts, not the purpose, counsel.

MR. KLONSKY: Above the main deck level there are two-high containers as cargo.

May I pass this to the jury ?

THE COURT: Yes.

MR. KLONSKY: There is no gear or mechanism in that area except the containers.

THE COURT: That is a matter for testimony. You can't deduce that from the exhibit, I believe.

MR. KLONSKY: Should I continue while they look at it or wait?

THE COURT: Wait a few minutes.

MR. KLONSKY: They might then look at this, if I may.

THE COURT: You read that, didn't you?

MR. KLONSKY: Yes.

THE COURT: What is the use of sending it around? All right, you may do it, but it is duplicative.

DIRECT EXAMINATION

BY MR. KLONSKY:

Q Mr. Canales, what do you do for a living, sir?

A I work as a longshoreman.

MR. WATSON: Your Honor, excuse me one second.

May I ask that the fact witnesses be excluded from the courtroom?

THE COURT: Yes. The clerk will show them where to go. All witnesses are excluded, that is, they must go out of the courtroom.

Any others?

MR.KLONSKY: The plaintiff, of course, stays, does he not?

THE COURT: The plaintiff himself but no plaintiff's witnesses?

MR. KLONSKY: That is right.

THE COURT: That is fair enough.

Q Mr. Canales, did I ask you what you do for a living?

A Yes, you did.

Q What do you do?

A I work as a longshoreman.

Q How long have you been working as a longshoreman?

A Over 18 years.

Q And in what capacity as a longshoreman?

A I started as a regular holdman and I have worked as a signal operator.

THE COURT: As what?

THE WITNESS: Signalman.

A Which is what I was doing that particular date.

Q I will ask you that.

Mr. Canales, on February 19, 1969, by whom were you employed?

A By Pittston Corporation.

Q Pittston Stevedoring Company?

A Yes.

Q And were you employed as a holdman?

THE COURT: At that time.

A Yes.

Q Were you also employed as a signalman?

A Yes.

Q What does a signalman do?

A Well, the work of a signalman is to make sure that when precise orders are given to the crane operator in such a case to be sure that everybody is free of danger and that everything is in order to either pick up or lower, something like that.

THE COURT: Does that include the other longshoremen?

THE WITNESS: That's including your fellow workers.

Q Now, sir, when cargo work is done on the main

deck and not in the hold, where do the holdmen work?

A The holdmen in this particular case --

THE COURT: He is asking a question. Try to answer the question, sir.

THE WITNESS: Yes, sir.

Q I will amend the qustion. Where do the holdmen work when you are discharging containers from the main deck?

A On deck.

Q And was Ridel Revilla one of these holdmen?

A Yes.

Q You have a passageway, don't you, on the inshore side of the ship?

THE COURT: Please don't lead him.

MR. KLONSKY: It will save time this way.

THE COURT: That isn't the primary purpose of a lawsuit.

MR. KLONSKY: True, but I did not think it was damaging to the defendant.

Q I will ask you this. Where did you position yourself while working as a signalman in the discharge of containers?

A I positioned myself on the starboard side of the ship between the railing and the square of the hatch.

Q You say the starboard sideof the ship. Was

that the inshore or outshore side?

A Inshore.

Q So there was something on the dock, was there not, that required a signal from you?

A Certainly.

Q What was that?

A The crane operator.

Q The crane operator.

THE COURT: Was he on the dock?

THE WITNESS: The crane was on the dock. So the crane operator is inside the cabin of the crane.

Q And do you give him signals when he should move that crane?

A That is correct.

Q Now, when he moves the crane, what is it that is moved, the cable, the boom or both?

A You can move both. You can move the cable and you can move the boom.

Q Separately or together, is that right?

A You can do it together, yes.

Q This boom that came from the dock crane, how long was it?

A I don't know exactly the length.

THE COURT: What is a boom?

THE WITNESS: A boom is the part of the crane which is attached to the moving truck, let's put it this way, and it is used to discharge containers.

THE COURT: You see, we don't know about those things. You seem to express impatience with us who don't know these things.

Q We will try to get a picture of the boom in short order.

Now, sir, do you recall the condition of the weather in the afternoon of February 19, 1969?

A Yes, I do.

Q What was it?

A During the day it had been snowing, hailing, raining and real windy.

Q What was the condition on top of the containers themselves?

A I say they were icy.

THE COURT: Were you on the top of the containers?

THE WITNESS: No, sir.

THE COURT: At any time that day?

THE WITNESS: No, sir. I was on deck.

MR.WATSON: I move to strike his answer, your Honor.

THE COURT: Strike it. There is no ground work for it, no foundation, counselor.

MR. KLONSKY: Subject to connection. I will have a weather bureau expert here, I assure the Court.

THE COURT: That isn't the main question. The main question is what was on the top of the containers, and you asked him about it and he says he was never up there, I take it?

MR. KLONSKY: Your Honor, can't we see something without being up there?

THE COURT: You haven't elicited that he could see it. That is the point.

MR. KLONSKY: I will do it. Thank you, your Honor.

Q Could you see from where you were positioned that afternoon what was the condition on top of the containers?

A No, but I could see it --

THE COURT: Wait. No is the answer.

Q Could you see the condition of the deck itself where you were working?

A Where I work?

Q Yes.

A Sure.

THE COURT: That isn't proof of what is on the container, counsel.

MR. KLONSKY: We will continue from that point.

Q Now, this crane --

THE COURT: I shall have to strike out his answer, then.

MR. KLONSKY: Only the part as to being icy, is that correct?

THE COURT: As to what was on top of the container, ice or whatever he said.

Q Let me ask you this, Mr. Canales, were there any lines or nets involved in this operation?

A No, sir.

Q Were there any safety devices to save a man from falling over the edge of that container?

A No, sir.

Q At the time of this accident, how high were the containers?

A They were two high on deck.

THE COURT: Two high? You mean in feet?

MR. KLONSKY: Yes. He said two high. I will elicit it further.

Q How high was each container?

A 8 feet high, which would be 16 feet.

Q 16 feet. Where were these containers located?

A I remember there were four containers left on the square of the hatch.

THE COURT: Where?

THE WITNESS: Four containers left on the square of the hatch, two on the bottom and two on the top.

Q What time had your gang come to work at No. 2 hatch?

A We came in at 1 o'clock.

Q Had you worked earlier that morning?

A Yes.

Q Did you discharge containers that morning?

A Yes, we did.

Q From No. 2 hatch?

A Yes.

Q Now, sir, let me ask you this: When you discharged the containers, which went first, the inshore ones or the offshore ones?

A Inshore ones.

Q And the four containers left at the time of the accident, were they inshore or offshore?

A They were offshore.

Q Aft or forward?

A Aft or forward?

Q Yes.

A They were in the square of the hatch.

Q On top of the square, but was it the forward part or the aft part?

A It covers practically the center of the square.

Q I see.

Do you recall whether you worked all that afternoon?

A Well, I remember that we stood by.

THE COURT: Yes or no, Mr. Witness. Do you recall is the question.

A We did not work all afternoon.

Q Why?

A Because of weather conditions.

Q How long were you knocked off from work, do you know?

THE COURT: When, counselor?

MR. KLONSKY: That afternoon.

THE COURT: Yes, but when in the afternoon?

Q When in the afternoon did you stop because of weather conditions?

A Right after we checked in.

Q When?

A We check in every afternoon.

Q Was this after lunch?

A After lunch.

Q Do you know how long you stayed away from work because of weather conditions that afternoon?

THE COURT: What time was it? Let us get down to time.

A It was after 3 o'clock, I know that.

Q That you did no work?

A That we stood by.

Q What about 1 o'clock?

THE COURT: What at 1 o'clock?

MR. KLONSKY: I have the log.

THE COURT: What is the question, counsel?

Q Do you recall what hour that afternoon your gang stopped working because of weather conditions?

A Just as we checked in because the conditions were bad.

THE COURT: He says what time?

A 1 o'clock, five minutes after one.

MR. KLONSKY: The log reads --

MR. WATSON: I would object to refreshing this witness' recollection with a log that he had nothing to do

with.

THE COURT: Yes, sustained.

Q Letme ask you this, the container was 8-foot high, is that right? How long was it?

A 20 foot.

Q How wide?

A 8 foot.

Q And let me ask you this further: How did they secure the bridle to the top of the containers?

A Well, you come with your boom which brings a bridle and you try to place it squarely on top of the container, at which time once you set it in place it is supposed to be locked in.

THE COURT: Like what?

THE WITNESS: You are supposed to lock the container -- rather, the spreader to the container.

THE COURT: How do you do that?

THE WITNESS: It has four corners and it has a lever which actually opens or locks by pulling a rope.

MR. KLONSKY: May I have this marked for identification? This will probably help.

(Plaintiff's Exhibit 3 was marked for identification.)

Q Now, would you look at Plaintiff's Exhibit 3

50A

for identification and advise us whether there is anything here that shows a diagram of the container and the twist lock and the rope --

THE COURT: Why don't you ask him what it does show, counselor? What does that show?

A It shows a spreader on top of the container.

THE COURT: Speak up, Mr. Witness. A spreader?

THE WITNESS: A spreader.

THE COURT: Where is the spreader?

THE WITNESS: Here.

THE COURT: Is it labelled spreader? Which is the spreader?

THE WITNESS: This is the spreader, this is the container, and on each corner you have --

THE COURT: You see, this doesn't mean anything because he is pointing to it. There is no label on it, at least by him. Why don't you tie it in a little more.

MR. KLONSKY: Yes.

Q Where the letter X appears, is that the spreader you talked about?

THE COURT: Is there only one letter X there?

MR. KLONSKY: Yes, your Honor.

Q Is this the one?

A Yes.

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Q There is a zero down here. What does that represent?

A The zero represents the locking device.

Q Here are two lines that are coming down --

THE COURT: Where is here?

MR. KLONSKY: On the bottom left corner is the locking device. On the bottom right corner which I will shortly show the Court and jury there is a drawing of a container --

THE COURT: Ask him. Don't you tell what is there.

MR. KLONSKY: I am trying to help, your Honor, because we all know about this.

THE COURT: You ask. We don't know anything until we hear it from witnesses or appropriate exhibits but you can't do it the way you are doing it.

Q Mr. Canales, I put an A here and a B here. What are those two lines?

A Those two lines are used for the purpose of either locking or unlocking a container.

Q You pull on these lines to lock or unlock?

THE COURT: Now what are you talking about?

MR. KLONSKY: I just put two marks.

THE COURT: Include it in your question.

Q Where the A B appears, are they used to twist the lock on each corner?

A Right.

MR. KLONSKY: Should I show this to the jury?

THE COURT: Not yet. You have to offer it. You have to show it to your adversary. Don't forget him. If there are any voir dire questions, say so.

MR. WATSON: I would have no objection, your Honor, if we restrict it to the parts of the diagram which have been marked X and a circle around the locking device.

MR. KLONSKY: I agree with you.

THE COURT: It is admitted subject to that condition.

MR. WATSON: Thank you, your Honor.

xx (Plaintiff's Exhibit 3 received in evidence.)

MR. KLONSKY: Can I show this to the jury?

THE COURT: Yes.

(Plaintiff's Exhibit 3 in evidence handed to the jury.)

Q Mr. Canales, these two ropes that were marked A and B on Plaintiff's Exhibit 3 in evidence, do they come with the bridle?

A Yes.

Q Do you know who owned the bridle?

A I suppose Pittston Stevedoring.

THE COURT: Do you know, he says. Do you know?

Q Do you know?

THE COURT: If you don't, say so.

A I don't know.

Q Were there any winches or gear or equipment at No. 2 hatch where the ship would discharge its own cargo?

A None whatsoever.

Q The crane was shored, a shore crane was used to move the containers, is that true?

A Yes.

Q Now, did you stay in one place at all times during this operation or did you move from rail to hatch cover?

A I moved --

Q From where to where?

A From the square of the hatch to the railing of the ship.

Q The inshore side of the hatch to the railing of the ship, is that right?

A Yes.

Q And how did you give signals to the crane operator?

A Well, I give him two signals, either up or down or up or down with the boom.

THE COURT: How did you give them? By hand or mouth?

THE WITNESS: By hand.

THE COURT: How did you signal by hand? You can show us.

(Witness indicates.)

THE COURT: He makes a kind of motion with his fingers.

Q How did you distinguish between taking the cable and moving the head of the boom?

A When you move your boom you indicate it with your finger.

Q Your thumb, is that right?

A Or down. That is your boom, not your wires.

Q Does this boom revolve and move toward the dock and move from the dock to the top of the ship itself, is that right?

A Yes.

THE COURT: That's a good leading question.

Q Now, when it brings an empty bridle or spreader to the top of the container to be discharged, where do the holdmen position themselves?

A On top of the next container.

Q And what do they do?

A When the spreader comes down, which I tried to bring it the best possible way to the square of the container, they haul it with their hands to put it in place.

Q In order to put the four corners of the bridle on top of the four corners of the container?

A Yes.

Q And then there is a twist lock which would move when you pull on these lines, is that right?

THE COURT: If there are any objections, Mr. Watson, because of leading questions --

MR. WATSON: It is leading, your Honor, but --

THE COURT: You object or not?

MR. WATSON: I do not object at this point, your Honor.

THE COURT: All right.

Q How many men work on top of the containers while one is being discharged?

A Usuaully four men or two men.

Q They work on each corner, is that it?

A To control the spreader.

Q Is there any line or wire afforded you at this time at this date --

THE COURT: Read that question when you are through with it.

MR. KLONSKY: I will withdraw it.

Q What, if anything, besides the men themselves is made available to position the spreader right on top of the container?

A No.

Q Nothing?

A No.

THE COURT: Is that what your answer is, nothing?

THE WITNESS: Nothing.

Q I am talking about February 19, 1969, about 4:15 p.m., nothing was furnished, is that true?

A I don't get the clear picture of what you mention.

THE COURT: He doesn't understand your question.

Q On February 19, 1969, when the accident happened to Mr. Revilla, what equipment, if any, was furnished the longshoremen to position the spreader on top of the four corners of the container?

A The same as usual.

THE COURT: What is that?

THE WITNESS: A spreader with a crane to handle it. That's the only thing we use.

THE COURT: Say so, then.

Q Was there any tag lines or guide lines?

THE COURT: At that time?

A None.

Q On other occasions --

THE COURT: Wait a minute. What do you mean by that, there were no tag lines? What do you mean by that?

MR. KLONSKY: Are you asking the question of the witness or myself?

THE COURT: I am not asking you. You haven't been sworn yet.

MR. KLONSKY: I was sworn in 1947, your Honor.

THE COURT: That is when you were admitted to the bar.

MR. KLONSKY: That is right.

THE COURT: Answer my question. Do you understand my question?

THE WITNESS: Yes, I do.

THE COURT: All right. What is the answer, then, what are the tag lines?

THE WITNESS: Tag lines are lines which are usually attached to a spreader in order to control from the base of the ship or let's put it the deck of the ship.

Q The tag lines are used to control the spreader from the deck of the ship, is that what you say?

A Yes.

THE COURT: Does that mean there are some longshoremen on the deck who operate these tag lines, is that what it is?

THE WITNESS: Yes.

Q Were there any provided this day?

THE COURT: Any what?

Q Were any tag lines provided this day?

THE COURT: If you know. Do you know?

A No, sir. No tag lines.

Q Do you have an opinion based on your expertise as to whether under the circumstances of this case whether tag lines were required?

MR. WATSON: Your Honor, I would object to expert testimony from this man.

THE COURT: Sustained.

Q In any event, how did the men get on top of these containers?

A Well, they were taken there by a ladder.

Q Portable ladder?

A Portable ladder.

Q They would climb up to the top of the container, right?

A Right.

Q Did you see the accident happen?

A No, sir.

Q Where were you at that time?

A I was by the square -- I had landed --

THE COURT: Just where were you at that time, if you can answer it?

A I was in the act of --

THE COURT: Where?

THE WITNESS: On deck.

Q You were on deck doing what?

A Placing myself close to the railing to give a better view to the crane operator.

Q For the crane operator to see the positioning of the spreader on top of the container?

A Partially.

Q He would depend upon your signals, is that right?

A Right.

Q Did you give him any signal just before this accident happened?

A No, sir.

Q And what did you see for the first time after the accident happened?

THE COURT: I don't know what that means.

Q Where was the plaintiff right after the accident happened?

A Right away you could hear that something happened. So naturally we stopped totally and the man had fallen off the container on the forward part.

Q You did not see him fall, did you?

A No, sir.

Q Do you know what caused him to fall?

A I don't, sir.

THE COURT: He doesn't know.

Q At the time this happened, were the spreader bridles yet secured to the container to be discharged?

THE COURT: Read that question.

Please don't speak so fast. It confuses the result because you speak so rapidly.

MR. KLONSKY: I am trying my best, your Honor.

THE COURT: Read the question, Mr. Reporter.

(Question read.)

THE COURT: If you know. Do you know?

THE WITNESS: I had handled the spreader --

THE COURT: Do you know about it?

THE WITNESS: No,sir.

THE COURT: You can't answer it, then.

Q Before you had moved to go to the rail to give a signal, what was the position of the spreader bridle the last time you saw it?

A Square on top of the container.

Q Is the spreader bridle the same shape as the container itself?

A Yes.

Q Did you see all four corners meaning all four corners of the container?

A Yes, sir.

Q But you did not know whether it was locked or not?

A No,sir.

Q Is there any signal given --

THE COURT: Was there, not is there?

Q Was there any signal, oral or motion, given to you that you saw or heard that they had yet not locked the container or had locked it?

THE COURT: If he had seen it, he wouldn't have heard it. All right, seeing or heard.

A No, sir.

THE COURT: Is that all on direct?

MR. KLONSKY: That is all for direct, your Honor.

THE COURT: Cross examination.

CROSS EXAMINATION

BY MR. WATSON:

Q Mr. Canales, is that the right pronunciation?

A Yes,sir.

Q Before this accident happened you were discharging other containers from the top of this ship, were you not?

A Yes, sir.

Q And on those occasions some of your fellow longshoremen were standing on top of the containers positioning the cradle or the bridle?

A Yes, sir.

Q Now, on those earlier occasions was any signal given to you to indicate to you that the cradle or the bridle was locked in place?

A Yes, sir.

Q What sort of a signal did you receive on those earlier occasions?

A The man on top of the container would talk to me and tell me "It's ready. You can pick it up."

Q In other words, this was done by voice?

A Normally.

THE COURT: At that time was it by voice?

Q I want to know what was done that particular afternoon before the accident happened on other containers?

A They talked to me that it is ready to be picked up or they indicate to me like this (indicating) that I can

pick up.

Q Then it would be your job, would it not, to in turn give a hand signal to the crane operator to let him know that it is okay to lift?

A Yes.

Q And that is your job, isn't it?

A Yes.

Q Now, at this particular time just before this accident happened, had you received any hand signal from anybody on top of the containers telling you that it was locked?

A No, sir.

Q And do I understand it that you did not see the accident happen?

A No, sir.

Q The first thing --

THE COURT: Wait. There is a double negative there.

Q Did you see what happened?

A No, sir.

Q Did you see the plaintiff fall off the containers?

A No, sir.

Q The first thing you saw is when he had landed on the dock?

A Right.

Q Now, you have been talking about tag lines. What are they made of?

A I think it is called manila rope.

Q Isn't that stevedore gear?

A Yes.

Q On this particular pier in Port Newark, didn't PIttstone Stevedoring Corporation have a gear room?

A They have.

Q And aren't there tag lines in that gear room?

A I suppose there are.

Q Did you ever on this day, February 19, 1969, ask for tag lines?

A No, sir.

Q Isn't it true that you didn't ask for tag lines on February 19, 1969, because you never used tag lines when yo re discharging containers?

A We have used it, sir.

Q You used it on occasion, haven't you?

A On more than one occasion, yes.

Q More than one occasion. But didn't you just testify in answer to Mr. Klonsky's question that the gear that you were using on this particular afternoon was the usual gear?

A The gear, yes.

Q In other words, it was usual for you to discharge containers with a bridle without tag lines?

A It wasn't a safe procedure.

THE COURT: Nobody asked you that. You may move to strike that out.

MR. WATSON: I move to strike the answer as unresponsive.

THE COURT: Strike it out. Read the question.

MR. KLONSKY: May I respectfully ask it be put in the context of the conditions on that day?

THE COURT: Well, I think they have been claimed and testified about, counselor.

Q Mr. Canales --

THE COURT: That day is enough. Reword your question.

MR. WATSON: I will withdraw the question and go at it another way.

THE COURT: Question withdrawn.

Q Mr. Canales, who was your superior in Pittston Stevedoring Corporation on the afternoon of February 19th?

A Jesus Serantes.

Q Was he your hatch boss?

A Yes.

Q Did you at any time on February 19th ask your hatch boss to provide you with tag lines for these bridles?

A No,sir.

Q I believe you testified that there were no nets or no railings or nothing to prevent people from going off the edge of the container, is that not right?

A Yes.

Q That was in answer to Mr. Klonsky's question.

You did so testify, did you not?

A Yes.

Q Did you at any time on February 19th ask your hatch boss for any kind of nets or wires to put around the edge of the containers?

A No, sir.

THE COURT: Please speak up.

THE WITNESS: No, sir.

Q Isn't it a fact, Mr. Canales, that you don't ever rig safety nets around containers when you are discharging them from the top deck of a ship when they are only two high?

A That is right.

Q You never use them?

A I never seen them.

Q You have never seen them used? How long have

you been working as a longshoreman?

A A little over 18 years.

Q And for how many of those years have you been working on the discharge and loading of containers?

A About seven or eight years.

Q And that is about the length of time that they have been using containers, isn't it?

A No, sir.

Q Isn't it true, Mr. Canales, that they started using containers in the late 1960s?

A No, sir.

Q Had you ever seen a container ship before 1968?

A Yes, sir.

Q Had you worked on them in those days as well?

A I have worked and I have watched.

Q Before 1968?

A Right.

Q And at no time during that time have you ever seen nets or railings rigged around the top of the containers to prevent people from falling off?

A Right.

Q And that includes all weather conditions, doesn't it?

A Yes.

MR. WATSON: Excuse me one moment, your Honor.

(Pause.)

Q Now, Mr. Canales, on this particular operation, that is, the discharge of these containers, isn't it true that the only people who were directly involved in this discharge were either the crane operator or your fellow employees, longshoremen employed by Pittston?

A Yes.

Q There was nobody else working on this job besides the longshoremen and the crane operator?

A Correct.

THE COURT: Speak up so we don't have to guess at your answer.

A Yes.

THE COURT: That's better.

MR. WATSON: I have no further questions.

THE COURT: Any questions from counsel?

HOCKETT: None by Pittston.

MR. BLANC: None by Hoffman.

THE COURT: Redirect.

REDIRECT EXAMINATION

BY MR. KLONSKY:

Q With respect to other personnel aboard the vessel, was the crew there, did you see?

A Yes.

Q Do you know what a night mate is?

A Yes.

Q Do you know what a cargo mate is?

A Yes.

Q Do you know what a second mate or a third mate would be?

A Yes.

Q Did you see any of them while you were discharging these containers?

A You see them once in a while.

Q They come around checking --

THE COURT: Wait. Confine it to this time.

Q This day, did you see crew members about?

THE COURT: At that time on that day.

THE WITNESS: The very minute?

Q No, that afternoon.

A Yes.

Q When you were knocked off at 1 o'clock because of the bad weather, who did that, do you know?

THE COURT: Who did what?

MR. KLONSKY: Knocked you off.

THE COURT: Who gave the order to stop work, that's what it means.

A The gang boss.

THE COURT: Was it the hatch boss or who?

THE WITNESS: Yes.

Q Do you know - from whom he got his orders?

THE COURT: No.

MR. KLONSKY: Yes or no.

THE COURT: There is no foundation for that, counselor.

Q Now, sir, we talked about railings and nets and you don't usually or don't ever see them at the base of the containers being discharged, is that true?

A True.

Q But tag lines, when the weather is bad and the men would be exposed to danger, if they went on top of containers, is that a time you would use tag lines?

MR. HOCKETT: I will object, your Honor, on behalf of the third-party defendant.

A Right.

THE COURT: Sustained.

Q What would prompt the use of tag lines in the course of cargo discharge?

MR. HOCKETT: I am going to object. No objection for his expertise.

THE COURT: Sustained. He is not an expert.

MR. KLONSKY: I wonder why not, your Honor. He has been experienced in doing this work for many years.

THE COURT: That doesn't make him an expert.

MR. KLONSKY: He certainly knows more about it than I do.

THE COURT: That may be. I wouldn't doubt that.

MR. KLONSKY: Okay. I have nothing further.

THE COURT: Any further questions?

MR. WATSON: No further questions.

THE COURT: You are excused. You may step down.

(Witness excused.)

THE COURT: Next witness.

MR. KLONSKY: Mr. Martinez.

THE COURT: Who is the next plaintiff?

MR. KLONSKY: He worked with the plaintiff. I need the interpreter for this witness.

THE COURT: Swear the interpreter first.

(Anthony R. Amarante was sworn as Spanish interpreter.)

THE COURT: I take judicial notice because of many occasions when he has acted as an interpreter here as to his capabilities.

THE INTERPRETER: Thank you.

R A F A E L M A R T I N E Z, called as a witness by the plaintiff, having been first duly sworn, testified through the interpreter as follows:

MR.KLONSKY: Your Honor, is there a chance of getting any water?

THE COURT:Yes. We will have a short recess.

THE CLERK: Court will have a short recess.

THE COURT:Jury may retire.

(Recess.)

THE COURT: You may proceed.

DIRECT EXAMINATION

BY MR. KLONSKY:

Q Mr. Martinez, do you understand a little English?

A Very few things.

THE COURT: Now wait a minute. I don't care how much English he understands. If there is an interpreter, you must ask your questions in English and the interpreter will pose them in the Spanish, which I understand is his language, and the witness must answer them in Spanish to the interpreter. The interpreter of course will translate

it into English. That is the way it must work.

Q Mr. Martinez, what do you do for a living?

A Longshoreman.

Q How long have you been a longshoreman?

A Since 1959.

Q And by whom were you employed at the beginning?

A For Pittston.

A And on February 19, 1969, by whom were you employed?

A For the same company, Pittston Stevedores.

Q And where was this located, this operation?

THE COURT: Where was what located?

MR. KLONSKY: The operation on February 19, 1969.

A At Pier 11 in Port Newark.

Q And this was aboard a ship, was it?

A Aboard a ship, yes.

Q In the course of your work that day, did you have a partner?

A Yes, sir.

Q Who was he?

A Mr. Revilla.

A He is the plaintiff in this case, is that right?

A Yes.

Q Now, what time did you report to work that day, February 19, 1969?

A At 1 o'clock in the afternoon, on the second tour.

Q What did you do that morning?

A Discharging containers.

Q Do you know at which hatch?

A Hatch No. 2.

Q Now, these containers, how high were they?

A Two containers high was 16 feet.

Q At the time of this accident, how many containers were on the No. 2 hatch?

A Around four or six in the hatch that we were at.

Q This was on deck, was it not?

A On deck, yes.

Q What was the condition of the weather that afternoon?

A Very bad.

Q Did you stand by --

THE COURT: Wait a minute now. What does that mean? I will entertain a motion to strike that out?

MR.WATSON: I move to strike it, your Honor. I assumed the next question was going to elaborate on it.

THE COURT: If you don't object, I will forget it.

Q When you say very bad, Mr. Martinez, what do you mean?

A It had been raining and snow had been falling.

Q What about the wind?

A Very strong.

Q What about ice?

A It was frozen water. We were on stand-by from about 1 o'clock up until 3, 3:30, something like that.

THE COURT: Did you see any ice on the container? Yes or no?

THE WITNESS: Frozen water, your Honor.

THE COURT: Frozen water?

MR. KLONSKY: That's ice, your Honor.

THE COURT: Yes, I understand that.

Q Mr. Martinez, when you were standing by, was it because of the weather conditions?

A The weather, yes.

Q What time did you go back to work that afternoon after the stand-by?

A Around 3, 3:30.

Q At the time you went back to work at 3 or 3:30, had the weather changed?

A Yes, quite a bit.

Q How had it changed?

A It had stopped.

THE COURT: What stopped?

THE WITNESS: The snow and the rain.

Q And what time had it stopped?

A At the time that we started to work again when we resumed at 3 or 3:30.

Q And then what happened with the weather after that?

A The weather continued raining but very, very lightly.

Q What happened to the icy condition that you saw?

A That it was very dangerous, very dangerous to work.

MR. WATSON: I object to that.

THE COURT: Strike it out.

Q My question to you, Mr. Martinez, is did the ice continue or did it dissolve before the accident happened?

THE COURT: I don't know that he knows what dissolved means.

Q At the time of the accident, what was the condition of the surface of the containers?

A The containers on the top were somewhat wet and somewhat frozen, like ice.

MR. WATSON: I don'tknow what somewhat frozen can be, your Honor.

MR. KLONSKY: He said like ice, your Honor.

THE COURT: Okay.

Q Was anything furnished you to remove that ice or to cover that ice?

A No.

Q Who ordered you to go back to work after the standby?

THE COURT: Was it the hatch boss?

A The company who orders us.

THE COURT: Was it the hatch boss?

THE WITNESS: Yes, the hatch boss because the hatch boss -- the stevedore ordered him.

Q Did you see this accident happen?

THE COURT: Yes or no.

A Yes, sir.

Q On what part of the container did it occur?

THE COURT: What is that question?

MR. KLONSKY: On what part of the container did it occur?

THE COURT: I don't know what that means.

Q Where was the plaintiff located just before the accident happened?

A On one of the corners of the container.

Q Was it forward or aft?

A The forward part.

Q And were you on top of the container with him as his partner?

A Yes.

THE COURT: Was he standing at the corner of the container?

THE WITNESS: Yes, sir.

Q Was this the container to be discharged or the one next to it?

A Next to it, the one that was going to be discharged.

Q Next to the one that was going to be discharged, is that whatyou said?

A Yes, sir.

Q What caused the accident, if you know?

THE COURT: Wait a minute.

MR. KLONSKY: I will withdraw that question, your Honor.

THE COURT: Very well.

Q What did you see happen to the plaintiff while he

was on the corner of the container?

A The bridle moved and I saw the man fall. The reason I do not know.

Q When you say the bridle moved, was it attached to the container or was it loose?

A As yet the bar had not been locked in.

Q You mean the corners had not been locked in?

A No, as yet it had not been locked in.

Q Did you see any signal given to anybody to move that bridle?

A No, sir.

Q Did you hear any signal to move that bridle?

A No, sir.

Q Now, how did the boom move, if you observed it, at that time? Let me put it this way: Did you observe the boom of the crane just before the accident happened?

A No, I did not see it.

Q Where was the bridle itself just before the accident happened?

THE COURT: If he saw that.

A It was placed on top of the container.

Q Had it yet been locked in place?

A No, not yet.

THE COURT: Let me ask a question at that

point.

The bridle was about to be placed on the container not on which the plaintiff stood on the corner but next to it, is that correct?

THE WITNESS: Yes, your Honor.

Q And what was the next step to be done before the accident occurred?

A To lock it in.

Q And how would you do that?

A You have to pass the bridle through to make sure that it is in the middle (indicating).

A When you say the middle, you mean they should fit the bridle right over the container?

A Yes.

Q Had it as yet gone to each corner in harmony or was it still to be adjusted?

A It was on top of the container.

Q Was it fitted on each four corners with the container?

A Yes.

Q I see. Who was -- I will withdraw that.

How many men were on top of these containers at that time?

THE COURT: These containers? What does that

mean?

MR. KLONSKY: Two containers.

THE COURT: Be specific, counselor.

Q How many men were working aloft at that time?

A Two.

Q You and Mr. Revilla, is that right?

A Yes, sir.

Q And where were you located at the time this accident happened?

A I was on the opposite corner where he was.

Q Which corner was he at? Was it inshore or offshore?

THE COURT: I don't know how he can tell which corner it was. Do you?

MR. KLONSKY: Yes.

THE COURT: Well, I don't know. Maybe he can.

Q I will ask you this, which side of the container did he fall from?

A The forward part.

Q Was it the inshore or offshore part of that forward part?

A The part in the front of the container.

Q He was on an adjoining container right near the container to be discharged, is that what you say?

A Yes.

Q Would that be the forward inshore side of the container on which you were standing?

A More or less, yes.

Q And you were located on the opposite end of that container?

A Yes, sir.

Q This is the container that was next to be discharged, is that true?

THE COURT: I don't know what that means, counselor. It is not clear.

MR. KLONSKY: It was not being discharged at the time.

THE COURT: Reframe your question.

Q When you were standing at the opposite corner, were you standing on the container that was to be discharged or the one next to the container that was to be discharged?

A The one that was going to be discharged later. We were holding the bridle.

Q Now, did you see what actually occurred to prompt the plaintiff to fall off the top of the container?

THE COURT: What?

Q Did you see what actually occurred that prompted the plaintiff to fall off the container?

THE COURT: I don't knowwhat prompted him means.

Q That caused him to fall off.

A No, I can't tell you that.

THE COURT: Okay.

Q Did you see the area of the top of the container from which he fell before the accident happened?

A Yes.

Q And what did you see there?

A It was wet, it was like frozen water.

Q Ice?

A Yes.

Q Now, sir, under conditions of weather as you had that day, had you ever in the past used any other equipment than what you were furnished that day?

MR. HOCKETT: I will object to the question.

THE COURT: Sustained.

Q Mr. Martinez, were you furnished any equipment where you could have maneuvered the bridle from the deck instead of on top of the container?

MR. HOCKETT: Objection.

THE COURT: Sustained.

Q What equipment, if any, was furnished to you so that you would not have to go on top of this container?

MR. HOCKETT: Objection.

THE COURT: Sustained.

Q Mr. Martinez, what is a tag line?

A A rope which is placed on the container.

A Is it also placed on a bridle?

MR.HOCKETT: Objection.

A Yes.

Q Was there any tag line placed on this bridle before the accident happened?

THE COURT: Ascertain if he saw it.

MR. KLONSKY: That is what I am asking.

THE COURT: You didn't ask it at all.

Q Did you see any tag line on this bridle before the accident happened?

THE COURT: Wait a minute. Let me ask a question to try to solve this.

Did you see the bridle before the accident?

THE WITNESS: Yes, sir.

THE COURT: All right.

Q Did it have a tag line or tag lines on it?

A It only had a rope to open and close.

Q That's pecker lines that are marked A and B.

MR. WATSON: Is that a question or a statement?

THE COURT: If you object because it is a leading question, I will sustain it.

MR. WATSON: I object.

THE COURT: I sustain the objection.

Q Look at Plaintiff's Exhibit 3 in evidence. Will you point to the lines --

THE COURT: I sustained the objection, counselor. You cannot ask that question. Is it clear to you?

MR. KLONSKY: It isn't, your Honor.

THE COURT: Now I will make it clear. You are not to ask that question. I have sustained the objection.

MR. KLONSKY: I am not asking that question. I am now referring to an exhibit in evidence.

THE COURT: Then it is a new question?

MR. KLONSKY: Yes, your Honor.

Q Look at Plaintiff's Exhibit 3 in evidence and point to the lines you were talking about.

THE COURT: What lines?

MR. KLONSKY: The lines he just testified about being there on the bridle.

THE COURT: I don't know whether he understands it.

A These lines that are here.

MR. KLONSKY: He is indicating what has been

marked A and B on this exhibit. Do you wish to see that?

MR. WATSON: No, thanks.

Q How long were these lines, do you know?

A Precisely, I don't know, but they are used as a length of six to eight feet.

Q And if they were made longer, could they have been maneuvered from the deck?

MR. HOCKETT: Objection.

THE COURT: Sustained. It is speculative.

Q Mr. Martinez, in the past before this accident occurred, had you seen bridles with tag lines that were operated by men on the deck instead of on top of the containers themselves?

A I don't know. We were working an hour on, an hour off.

THE COURT: All right, "I don't know" is the answer.

Q I am talking about in the past, not that same day.

A They always place tag lines in the corners.

Q Were there any tag lines in the corners on this day?

A At the time that we were working, no.

MR. KLONSKY: That is all.

THE COURT: Cross examination.

CROSS EXAMINATION

BY MR. WATSON:

Q Mr. Martinez, did you see any movement of this bridle just before the accident happened?

A No.

Q When you answered Mr. Klonsky's questions, didn't you say "The bridle moved and I saw the man fall"?

A After the bridle had been placed.

Q The first thing that happened was that this bridle was placed on top of the container to be discharged, wasn't it?

A Yes.

THE COURT: It is a little later than I thought it was. We will recess now until 2 o'clock.

Please heed my instructions.

(Luncheon recess.)

AFTERNOON SESSION

2:00 p.m.

(Jury present.)

R A F A E L M A R T I N E Z, resumed.

THE COURT: You may continue your cross, Mr. Watson.

MR. WATSON: May I ask the reporter to give me the last question and answer, please.

(Read.)

CROSS EXAMINATION (Continued)

BY MR. WATSON:

Q Mr. Martinez, after the bridle had been placed on top of the container, wasn't it somebody's job to pull the rope so as to lock the bridle to the container?

A Someone has to do it, yes.

Q Who was going to do it on this particular occasion, was it you or was it Mr. Revilla?

A Mr. Revilla.

Q And at the time the accident happened, how far away were you from the side or the edge of the bridle?

A Around three feet.

Q And did you see where Mr. Revilla was standing just before the accident happened?

A On the other corner of the container.

Q Did you see whether he had the pulling rope, the locking rope, in his hand?

A No, sir.

Q You didn't see whether he did or not, is that right?

A I did not see him.

Q Now, before Mr. Revilla fell off the top of the container, did you see that bridle move from its position lying on top of the container?

MR. KLONSKY: May I get the first part of the question, your Honor?

THE COURT: All right, read it.

(Read.)

A The bridle did move.

MR. WATSON: Did he say the bridle did move?

THE INTERPRETER: Yes.

Q In which direction did you see the bridle move?

A It came out from the container.

Q Did it lift up vertically from the container?

A As if it was coming up.

Q About how high up did you see that bridle come just before Mr. Revilla fell off the container?

THE COURT: From what standpoint?

Q How high above the container on which it had been lying?

A I can't give you the height as it was more or less at all.

Q Had you given any signal or any order to lift the bridle?

A No, sir.

Q Had you heard Mr. Revilla give any order to have the bridle lifted?

A No, sir.

Q Had you seen Mr. Revilla give any hand signals to have the bridle lifted?

A No, sir.

Q Did you see the bridle strike or hit Mr. Revilla after it was raised?

A I only moved away and I saw that he fell.

Q Did you see anything hit him?

A No, because I was on the opposite corner from him.

Q Do you know what caused Mr. Revilla to fall off the container?

A No, sir.

Q Now, how did you get up on top of these two containers which were 16 feet high?

A By a ladder.

Q Was that ladder still in position against the side of the containers at the time the accident happened?

A I can't say because I don't know.

Q Did you get down off the two containers after the accident happened?

A Yes, sir.

Q How did you get down?

A By means of a ladder.

Q Was that the same ladder that you had used in order to get up to the top of the container?

A A ladder that they put there. I don't know whether it was the same ladder or not but it was there.

Q Who put that ladder there?

THE COURT: At which time?

MR. WATSON: When he climbed up on top of the containers after coming back to work at 3 o'clock.

A We did, my co-workers on the job.

Q Other longshoremen?

A Yes, sir.

Q Now, Mr. Martinez, at any time on the afternoon of February 19th, the day of the accident, did you ask your hatch boss for tag lines to put on the corners of the

bridle?

A We are not supposed to.

THE COURT: That doesn't answer the question.

Q Let us get to that later. Did you or did you not ask for tag lines before the accident on the afternoon of the 19th of February?

A No, I did not.

Q Isn't it a fact, Mr. Martinez, that the distance from the top of the container to the deck was about 16 feet?

A Yes, about 16 feet.

Q And isn't it a fact, Mr. Martinez, that you have never used 16 feet long tag lines in order to position a cradle on top of a container?

A At times they use it, at times they don't put them on.

Q Have you yourself used tag lines when the containers are two containers high so that the top of the container is 16 feet above the deck?

A At times they put them on, at times they do not. It all depends upon the job.

MR. WATSON: I move to strike that as unresponsive, your Honor.

THE COURT: Yes, strike it out.

Do you want it reread?

MR. WATSON: Reread the question, please.

(Read.)

A I tell you now that there are times when they use them and times that they do not use them. That's all I can tell you.

MR. WATSON: I move to strike the answer again, your Honor. It is not responsive.

MR. KLONSKY: It is responsive. He was asked whether he ever used it and he said yes.

THE COURT: Read the answer, please, Mr. Reporter.

(Read.)

THE COURT: I will leave it.

Q Mr. Martinez, there was a rope on this bridle, was there not, that you used to lock and unlock the corners?

A In the middle you have two ropes, one to open and one to close.

Q And isn't it true, Mr. Martinez, that that rope or those ropes were six to eight feet long?

A Exactly.

Q Isn't it also true, Mr. Martinez, that if you were standing on the deck 16 feet below the top of the container you wouldn't be able to lock it into position

using that rope?

MR. KLONSKY: Your Honor, this is argumentative with respect to why the rope is six to eight feet. It can go to 16 feet.

THE COURT: No. Overruled.

A Much longer than that, yes.

Q In other words, if you had been standing on the deck on this ship, you would not have been able to lock that container in position, would you?

MR. KLONSKY: Objection, your Honor.

THE COURT: What is the objection?

MR. KLONSKY: The objection is that he asked whether he could have locked that container in position if he stood on the deck, but he doesn't indicate how long that rope has to be.

THE COURT: If that is all it is, the objection is overruled.

A It is incorrect, because the rope would have to be longer.

Q Mr. Martinez, isn't it true that Pittston Stevedoring has a gear room on the pier at the pier this ship was at?

A They have a gear room, yes.

Q And isn't it true that among other things in that

gear room are tag lines?

A You have everything there. They are the ones that concern themselves with that, not us.

Q When you say "they," you mean the stevedoring company, don't you?

A The people who place the equipment in there to work.

Q Aren't the people who place the equipment there to work Pittston Stevedoring Corporation, your employer?

MR. KLONSKY: I rise to object that as a matter of law it makes no difference who supplies the equipment.

THE COURT: Overruled.

MR. WATSON: Objection to that statement, your Honor.

THE COURT: Yes, disregard comments.

A We are only the working people. The company concerns itself with all of that.

Q When you say the company, you mean Pittston Stevedoring Corporation, don't you?

A The company that does the work. We do not know until we go to work who the company is.

Q You have worked for Pittston for a number of years, haven't you, Mr. Martinez?

A Yes, sir.

Q You are a regular employee or you certainly were a regular employee of Pittston in 1969?

A Yes.

Q Now, at any time after you went back to work at about 3 o'clock in the afternoon did you ask your hatch boss for sand or sawdust to spread on top of these containers?

A No, sir.

Q Now just one more point, Mr. Martinez.

Did you testify in answer to Mr. Klonsky's questions that when you went back to work at 3 o'clock the snow and the rain had stopped?

A It had stopped, both of them.

Q Now, who was it who told you to go back to work at about 3 o'clock?

A The stevedore sounds a whistle and the orders are given to go to work.

Q Did anybody tell you verbally to go back to work?

A No.

Q You just heard the whistle and you went back to work, right?

A Everybody went back to work.

Q Is that whistle located on the pier?

A It is the stevedore who is responsible for the sounding of the whistle.

MR. WATSON: No further questions.

THE COURT: Any redirect, Mr. Klonsky?

MR. KLONSKY: Yes, I do.

REDIRECT EXAMINATION

BY MR. KLONSKY:

Q What was the composition or type of surface that this container had?

THE COURT: Wait a minute. Read that question.

(Question read.)

MR. KLONSKY: I will withdraw that and ask it differently.

Q The container from which the plaintiff fell, what was it made of?

A Metal.

MR. KLONSKY: That is all.

THE COURT: All right. You are excused.

(Witness excused.)

THE COURT: Next witness, Mr. Klonsky.

MR. KLONSKY: Mr. Zeltmann.

W A L T E R F. Z E L T M A N N, called as a witness by the plaintiff, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KLONSKY:

Q Mr. Zeltmann, what do you do for a living?

A I am a meteorologist.

Q What does that mean?

A Well, a meteorologist concerns himself with the weather, all of the various phenomena and effects of the weather.

Q Would you be kind enough to give us the benefit of your background before you became a meteorologist?

A Yes. I trained with the Armed Forces in 1942 and in '43. I took additional training with the Air Force in 1950 and served as a meteorologist with the Armed Forces from 1943 to 1953. Since that time, I have been with a number of private firms as a meteorologist, including Weather Photocast, Trans World Airlines and my present firm, International Weather Corporation. I am a professional member of the American Meteorological Society, a member of the American Geophysical Union, the New York Academy of Sciences and the American Association for the Advancement of Sciences. I have in recent years been the vice

chairman of the New York City Chapter of the American Meteorological Society. I am currently the vice chairman and chairman-elect of the Atmospheric Sciences Section of the New York Academy of Sciences.

THE COURT: All right.

Q Did you at my request obtain from the Weather Bureau certified records relating to conditions of weather as of February 19, 1969, in the area of Port Newark?

A Yes, I obtained them from the National Climatic Center, which is the official custodian of them.

Q And are they certified?

A Yes.

MR. KLONSKY: I would like them marked for identification.

(Plaintiff's Exhibit 4 was marked for identification.)

xx

MR. KLONSKY: I will show them to my adversary and I offer them.

THE COURT: Please do.

Are those in some records you consulted, sir?

THE WITNESS: Yes, sir.

THE COURT: They are not records which you made?

THE WITNESS: No, I did not make them.

THE COURT: Whose records are they, then?

THE WITNESS: They are made by various weather stations and functions --

THE COURT: By what weather stations were these made?

THE WITNESS: By the Newark Airport Station, by a station in Jersey City and another one in Elizabeth and there are some weather maps --

THE COURT: What date are they referring to?

THE WITNESS: They are referring to February 19, 1969.

MR. WATSON: I have no objection.

THE COURT: All right, mark them in evidence.

xx (Plaintiff's Exhibit 4 was received in evidence.)

Q I hand you Plaintiff's Exhibit 4 in evidence and ask that you give us the benefit of your expertise relating to the conditions on the afternoon of February --

THE COURT: That isn't his expertise. It is the record you are asking about, is that correct?

MR. KLONSKY: The interpretation is expertise, your Honor.

THE COURT: That is a different story.

Q Give us your interpretation of these records as they pertain to weather conditions on February 19, 1969,

at and about Port Newark, New Jersey?

A Yes. First the overall conditions in the area are established by weather maps prepared as of 1 p.m. and 4 p.m. that day and they show that there is -- there was a large storm over the Atlantic Ocean which was --

THE COURT: What indicates it is a large storm?

THE WITNESS: The storm is located.

THE COURT: Don't show me that. Just answer verbally.

THE WITNESS: Yes. There is a low pressure center located off the Atlantic coast.

THE COURT: How far off the coast?

THE WITNESS: The center of the storm is approximately 500 miles southeast of Newark.

THE COURT: How was it at Newark, if there is anything that indicates it?

THE WITNESS: Yes. The edge of the storm had reached the coast and extended inland into over all of New Jersey, parts of New York and Pennsylvania.

THE COURT: I am just asking about Newark, Mr. Witness.

THE WITNESS: At Newark, there were cloudy skies, northerly winds and intermittent periods of rain and snow as in-

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dicated on these maps.

Going into more detail at the particular locations that I mentioned before --

THE COURT: Which locations are you taking now?

THE WITNESS:Let us start with the Jersey City report.

THE COURT: How far is Jersey City from Port Newark?

THE WITNESS: Jersey City is about five and a half miles northeast of Port Newark.

THE COURT: All right. Continue.

THE WITNESS: On the 19th they had precipitation beginning about 9 a.m. in the morning and continuing past midnight. That precipitation included sleet, hail, rain and snow. The temperatures on the 19th ranged from a low of 31 to a high of 36.

THE COURT: What time was the 31?

THE WITNESS: This just gives the range of temperatures for the day. It doesn't give an hour-by-hour reading.

THE COURT: Then you wouldn't know what it was at 3 o'clock from that?

THE WITNESS: Not from this report alone.

THE COURT: Is there anything else on any other report there that shows what it was at 3 o'clock?

THE WITNESS: At 3 o'clock when I get to the report from Newark.

THE COURT: Well, get to it and tell me.

THE WITNESS: Newark Airport is one and a half miles to the west.

Q One and a half miles to the west of Port Newark?

A Yes. And at 2:52 --

THE COURT: No, I am asking about 3 o'clock.

THE WITNESS: That is the closest report we have.

THE COURT: All right, state it, then.

THE WITNESS: 2:52, overcast skies, visibility 2-1/2 miles in light rain and light snow. Temperature 35, dew point 31.

THE COURT: Then it was above freezing at 3 o'clock, is that right?

THE WITNESS: At this station, yes. The wind was from the northwest at 14 knots and during the previous hour they had had some sleet which ended --

THE COURT: I didn't ask you about that.

MR. KLONSKY: I would like to know that.

THE COURT: You can come back later on redirect

or on your direct, of course.

MR. KLONSKY: Can I do it now?

THE COURT: Yes.

Q Mr. Zeltmann, would you please continue with what you were saying --

THE COURT: No, ask him a question. I don't know what you are asking him about. We work by questions and answers in court usually, counselor.

Q Prior to 2:52 but still remaining in the afternoon of that day, what other conditions, if any, did you see?

THE COURT: At Newark.

MR. KLONSKY: Port Newark, yes.

A I can give you a reading of the precipitation over a period of time beginning at noon.

Q All right.

A Starting at 12:03, there was light rain and light sleet; 12:25 it became light rain; at 1:05 light rain; at 1:40 light rain and light sleet; at 2:05 light rain, light sleet and light snow; at 2:15 light rain and light snow; and at 3:45 very light rain --

THE COURT: 3:45 or 2:45?

THE WITNESS: 3:45.

THE COURT: There is no record at 3?

THE WITNESS: The record would indicate

there was no change from the last one which was the report of the beginning of light rain and light snow at 2:15.

THE COURT: Did the beginning continue?

THE WITNESS: Yes, it continues up until 3:45.

THE COURT: A long beginning.

THE WITNESS: This is the period. It began as light rain and light snow.

THE COURT: Any other questions, counselor?

Q Keep reading.

THE COURT: There is no question just this minute.

MR. KLONSKY: I would like him to continue for the balance of the afternoon up until 4:30.

THE COURT: All right.

A At 3:45, very light rain, very light snow; at 4:10 it changed to very light snow; and it ended at 4:25, and then there was no precipitation up until 5:25 after that.

THE COURT: What is the latest temperature record you have for that afternoon before 5?

THE WITNESS: We have readings every hour here.

THE COURT: What was it at 4 o'clock then?

THE WITNESS: At 4 o'clock, actually the reading was made at 3:52. It was 34 degrees.

THE COURT: And what was it at 3 o'clock, do you have that?

THE WITNESS: 35 degrees.

THE COURT: All right. Anything else, counselor?

MR. KLONSKY: Yes, surely.

Q Mr. Zeltmann, at 1 o'clock the reading was what?

A At 1 o'clock? Well, the closest reading to 1 o'clock we have is 12:52.

Q What was that?

A Overcast skies, visibility eight miles, very light rain, temperature 35, dew point 29, wind from the north northwest at 18 knots with gusts of 25 knots.

Q Would you compare that, please, with 3:45 and tell us what, if any, difference?

A The difference is quite small. At 3:45 -- the closest reading I have is 3:52, and it is overcast skies, visibility four miles, very light rain, very light snow, temperature 34,dew point 32 and the wind from the northwest at 15 knots.

Q What was the temperature at that time?

THE COURT: What is that time?

MR. KLONSKY: That would be 3:52.

A 3:52 it was 34 degrees.

Q When was it last below freezing prior to that time, 3:45?

A Well, it was at freezing early in the morning between 4 a.m. and 7 a.m.

THE COURT: So that from what time to 3:52, or whatever it was, it was not freezing? What was the period when it was not freezing?

THE WITNESS: Well, the temperature varied between 33 and 36 degrees from 8 o'clock in the morning up until 4 o'clock.

THE COURT: Is there any testimony here, gentlemen, with respect to when this accident occurred?

MR. KLONSKY: Yes. Between 4 and 4:30.

THE COURT: Where is that testimony?

MR. KLONSKY: The log has the testimony.

THE COURT: As to the time of the accident?

MR. KLONSKY: Yes.

THE COURT: What does it say in the log, and Mr. Watson may check it?

MR. KLONSKY: You mean how the accident happened?

THE COURT: No, the time I am asking about.

MR. KLONSKY: I just said 4:30 is the time they put in the log. The entry was made at 4:30.

BY MR. KLONSKY:

Q Mr.Zeltmann, the temperatures that were taken at Port Newark -- Newark Airport and Elizabeth, New Jersey, would they in any wise be contrasted with the effects of the water and the exposures that would be aboard a merchant ship in a harbor nearby?

A The temperature readings made at a weather station are made in an instruments shelter under controlled conditions and they are not -- the air there is not exposed to the influences that you find in other parts, other places.

Q What influences would play a part on the ship in Port Newark?

A The proximity to the open water, the openness to the sky, it is not in a shelter condition.

Q What about the composition of the surface on which you walk?

A The temperature of a surface could be different from the surface -- temperature of the air.

Q Assume there was a metal surface, would that make it less or more?

A Metal surfaces cool off quite rapidly.

THE COURT: What?

THE WITNESS: Metal surfaces cool off quite

rapidly, your Honor.

THE COURT: Do they also at times warm up rapidly?

THE WITNESS: They do, your Honor.

Q Under the conditions on this day as you have seen them in the weather reports, would they warm up or cool off --

THE COURT: If you can tell scientifically. Can you tell?

A There was a solid overcast all day long, no sunshine whatever. So there was no indication of any warming from the sun.

Q Are your readings consistent with a condition of ice or formation of a slippery surface?

A Yes.

MR. WATSON: I would object to the question.

THE COURT: Sustained. Move to strike his answer? You may move to strike.

Q Mr. Zeltmann, there was testimony there was frozen water on the surface of the container ship and the container that was being discharged at about 4 or 4:30 that afternoon. Do your findings and readings appear or do not appear consistent with that?

A Yes, they are consistent with that.

THE COURT: All right.

Q Now let me ask you this. Please assume --

THE COURT: Aren't you just about through with this witness?

MR. KLONSKY: I am just about through but I am not through yet, your Honor.

Q Would you please tell us what happened, if anything, between 1 o'clock when they were knocked off because of rain and snow and 3:45 when they were told to resume work with respect to weather conditions?

THE COURT: Hasn't he testified to it already?

MR. KLONSKY: I don't think so, your Honor.

THE COURT: Well, I thought he did.

A Well, there was continuous rain and sleet and snow mixed together during that whole period and it continued past -- up until 4:25.

MR. KLONSKY: Thank you.

THE COURT: Cross examination, if any.

CROSS EXAMINATION

BY MR. WATSON:

Q Dr. Zeltmann -- is it doctor or Mr.?

A Mr.

Q Mr. Zeltmann, I assume that you have been testifying from the Newark, New Jersey readings of the United States Department of Commerce that is headed

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"WBO, Newark, New Jersey"?

A Yes.

Q And that gives a rundown for the whole day for -- is it Newark Airport?

A Newark Airport.

Q Is that where WBO is?

A Yes. Weather Bureau Office.

Q Now, in answer to Mr. Klonsky's question you talked about ice on top of a metal container in Port Newark being consistent with the Weather Bureau report, did you not?

A Yes.

Q Can you pointout to me, Mr. Zeltmann, where you find an indication of freezing temperatures on the afternoon of February 19th between the hours of 1 p.m. and 4 p.m.?

A During this period of time there were reports of sleet and snow.

Q Sleet and snow in the air is onething, isn't it, and sleet and snow staying on the ground in a frozen condition is another?

A True.

Q And you have often seen snow flurries when the temperature of the ground may be as high as 50 and they don't last for more than a minute?

A Well, with a temperature that high they wouldn't last very long, no.

Q And if the temperature of the surface on which they landed was above freezing, the sleet or the snow would melt, wouldn't it?

A It would tend to melt, depending on how cold.

Q I said if the temperature of the surface is above freezing.

A It would tend to melt, yes, but the rate of melting would depend on the temperature.

Q And the rate of melting would depend on the rate at which the sleet and the snow was falling, wouldn't it?

A Yes, it would be a combination of those two factors.

Q And you admit, do you not, that a metal surface is a rapid heat conductor or heat absorber?

A It changes temperature in either direction quite rapidly.

Q And you would assume, would you not, that a horizontal metal surface would quickly come to the same temperature as the air to which it was exposed?

A It would be influenced by all of the factors in its environment, including the fact the air itself would be influenced by the factors in this environment.

Q Would you not expect, Mr. Zeltmann, that a metal surface would accommodate itself to surrounding temperatures faster than some other surface like wood?

A Yes, there would be that tendency, yes.

Q So if the air temperature in the immediate contact with its metal surface had remained above freezing ever since -- if I can read it correctly -- 7 o'clock that morning, would that not indicate to you that the surface of the metal was itself above freezing?

A Well, the surface of the metal would be affected not only by the air temperature but by the temperature of the contents in the container, for instance, the air tract in the container, if there were any.

Q What about the effect, Mr. Zeltmann, of the water temperature in which the ship was sitting at the time? Would that not have an effect on the air temperature surrounding the ship?

A It would have some effect on the air temperature over a period of time but in this particular time you have consistent northwest winds off the land so that the effect would be downstream, down the wind stream, away from the ship or away from the shore.

Q You claim to know in which direction this ship was lying?

A No, I claim to know in which way the wind was blowing. It was blowing away from the shore.

Q And that assumes that the ship was facing east and west, doesn't it?

A No, it assumes the ship was at the shore.

Q Sitting in the water?

A Yes.

Q Isn't it notoriously true -- let me withdraw that.

If this ship were in Port Newark on the south side of the port, would that not mean that the temperature of the water would be blowing onto the ship?

A The wind was blowing off the land from the northwest and the ship being close to the land in whatever berth it was would not be affected by that water temperature -- the air passing over the ship would not yet have been affected by the water temperature.

Q And you assume that to be true even though the water temperature might have been in the 40s?

A It is true because it takes time for this exchange of heat from the water to the air to occur, and we have winds that are blowing steadily offshore. It would take effect but it would take effect a considerable point down to the south -- down away from the shore.

Q Mr. Zeltmann, would you look at one of the sheets on your Exhibit No. 4, a page that is headed "Local Climatological Data for Newark, New Jersey, Newark Airport, for the Month of February."

A Yes.

Q Isn't there a column which relates to precipitation in the middle?

A Well, there are several entries under precipitation.

Q There are two columns specifically under precipitation, snow and sleet in inches and water equivalent.

THE COURT: You are referring to Columns 10 and 11?

Q I am. And those columns give you, do they not, the total accumulation during the 24 hours of precipitation for that date?

A Yes, they do.

Q Would you please take a look at February 19th and tell me the total accumulation of snow and sleet for the 19th of February?

A They reported a trace.

Q And that's the total?

A Yes.

Q A trace. And according to the professional descriptions or technological descriptions, how deep is a trace?

A A trace reported in that column would be less than a tenth of an inch.

MR. WATSON: I have no further questions.

THE COURT: Let me ask one question, sir. You mentioned that perhaps the contents of this container might influence the temperature on the top of the container, is that so?

THE WITNESS: Well, the surface of the container would be influenced by all of its environment, the outside and the inside.

THE COURT: That is true generally, but what would you have to have in the container to cool it off? Ice or something?

THE WITNESS: I have no idea what was in the container.

THE COURT: Then you don't know that there was any such factor operating, do you, at this time?

THE WITNESS: That's why I couldn't make an opinion on that.

THE COURT: Very well. That's all.

REDIRECT EXAMINATION

BY MR. KLONSKY:

Q Mr. Zeltmann, would you please look at that Newark meteorological report for me.

A Yes.

Q In this Column 9 where they talk about snow, sleet or ice on ground, at 9, what was it on February 19th?

A 4 inches.

THE COURT: Where was that?

THE WITNESS: That was at Newark Airport.

Q Let us go to the hour precipitation and start with 9 a.m. in the morning until let's say ending at 5 p.m.. Is there any indication of any cessation of downfall in that period?

A On this report --

Q Yes.

A -- and on the details reported for the day, no, there is no indication of any cessation.

Q Something was constantly coming down at all times, is that right?

A All the way up to 4:25.

Q Would you look under 2 p.m. that afternoon?

A Yes.

Q Is there more than a trace of snow that fell

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at that time?

A Well, this is precipitation, which is the water content. There is .02 inches.

Q Let us look at the temperature chart on that same page on the 19th. What was the low for that day?

A The lowest reading was 31 degrees.

Q And what was the average?

A The average was 34 degrees.

MR. KLONSKY: That's all.

THE COURT: One question, sir. How do they measure the snow at the airport? How do they measure the snow? On what kind of a surface?

THE WITNESS: They choose an undisturbed area, preferably sod.

THE COURT: Sod?

THE WITNESS: Yes, preferably.

THE COURT: Not metal, sod?

THE WITNESS: Yes.

THE COURT: Grass, for example?

THE WITNESS: Yes.

THE COURT: That's all.

Anything else?

MR. WATSON: Yes, your Honor, definitely.

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RECROSS EXAMINATION

BY MR. WATSON:

Q The last question that you were asked, Mr. Zeltmann, related to 2 o'clock on the hourly precipitation page of the Newark Airport.

A The monthly report, yes.

Q The monthly report. And that is .20 water equivalent at 2 p.m.?

A Yes.

Q That is 2/100 of an inch?

A Yes, water equivalent.

Q Water equivalent. That could well have been 2/100 of an inch of rain, could it not?

A I can determine that for you for that hour if you want me to. During the hour from 1 p.m. to 2 p.m., they started off with light rain. It became mixed with light sleet at 1:40 and light rain and slight sleet continued past 2 p.m.

Q And during that 60 minutes that the report tells us about the total water equivalent of what fell measured 2/100 of an inch?

A Correct.

Q Let us go back to the other question, Mr. Klonsky just asked you. He asked you to look in

Column 9, which is headed "Snow, Sleet or Ice on the Ground at 7 a.m." Right?

A Yes.

Q And you told Mr. Klonsky in response to that, I believe, that there was four inches of snow, sleet or ice on the ground at 7 a.m. on the 19th?

A Correct.

Q That particular measurement bears no relation whatsoever to what fell during the day of the 19th, does it?

A Well, the precipitation that fell during that day began to fall after that measurement, yes.

Q When was that measurement taken?

A At 7 a.m.

Q If you look up further in Column 9, Mr. Zeltmann, don't you see that there was a very heavy snowstorm about ten days before in Newark?

A Yes, there was.

Q And isn't that four-inch measurement that they give for the 19th an indication that of the original 14 inches which had fallen ten days earlier there were still four inches on the ground?

A Yes, most of it resulted from that storm.

Q So that 4-inch figure for the 19th in this

particular column does not tell us anything about the weather conditions on the 19th itself? Just limiting ourselves to that four-inch measurement.

A The fact that there was snow on the ground has an effect on the lowest layer -- the temperature of the lowest layers of air near the ground.

Q But if that snow had fallen ten days earlier, Mr. Zeltmann, it doesn't necessarily follow that that indicates snow that was on the ground everywhere on the 19th, does it?

A No, it doesn't. It could be -- it could have been removed or shovelled away or something, yes.

Q Or maybe the ship wasn't even there ten days earlier?

A I wouldn't know about that.

MR. WATSON: I have no further questions.

THE COURT: All right. You may go.

REDIRECT EXAMINATION

BY MR. KLONSKY:

Q Let me ask you this, the word sleet, does that indicate frozen sleet?

THE COURT: What is this, redirect?

MR. KLONSKY: I am going on Mr. Watson's recross. I am asking within the purview of his testimony.

THE COURT: What is the question, please?

Q The word sleet, what does that connote?

A To put it simply, it is frozen raindrops.

Q And it fell on the afternoon of that day, did it not?

A Yes, it did.

MR. WATSON: I am sorry, your Honor, I must ask one more.

THE COURT: All right. This is a ping pong game at times. It has to end sometimes.

MR. WATSON: I hope it is the end of it.

RECROSS EXAMINATION

BY MR. WATSON:

Q The fact something falls frozen from the sky, Mr. Zeltmann, doesn't mean it is freezing on the surface where it lands, does it?

A That could be true.

THE COURT: What is the answer?

Q You get hailstones coming out of the sky in the middle of summer, don't you?

MR. KLONSKY: I object to hailstones. That is not involved in this case.

THE COURT: It has a connotation. Overruled.

Q Isn't that true?

A It is true that things falling on the ground can melt, but it usually takes some time for them to melt.

Q And that you get freezing things coming down in the air when the surface of the ground is well above freezing?

A That's true.

MR. KLONSKY: I object to"well above freezing". There is no such testimony in this case that it was well above freezing.

THE COURT: Strike out "well" and ask your question again.

Q Mr. Zeltmann, isn't it true that you can get frozen sleet or hailstones falling when the surface temperature on the earth is above freezing?

A Yes.

MR. WATSON: Thank you. That's all.

THE COURT: That's all.

(Witness excused.)

THE COURT: Next witness.

MR. KLONSKY: At this time, your Honor, I wish to read the testimony of Francis J. Quinn, Jr., who was a witness brought to deposition --

THE COURT: This is a deposition, I take it?

MR. KLONSKY: Yes, your Honor.

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THE COURT: May I have a copy of the deposition.

MR. KLONSKY: I didn't take it.

THE COURT: I would like one copy. I don't care whether it is an original or not.

MR. WATSON: I object, your Honor, unless there is a showing Mr. Quinn is not within the purview of the Court.

THE COURT: Yes, that is necessary. Sustained. That's the rule.

MR. KLONSKY: This was taken by Mr. Blanc.

THE COURT: I don't care who it's taken by. The rule is clear.

MR. KLONSKY: This was taken by a party who is an employee of the third-party defendant.

THE COURT: Does that make any difference under the rule?

MR. KLONSKY: I think it does make a difference, your Honor.

THE COURT: What do you say, Mr. Blanc?

MR. BLANC: I say it makes no difference whatever. This witness is within a hundred miles of this court and there is no justification for reading his deposition.

THE COURT: You object, then?

MR. BLANC: Yes, your Honor.

MR. KLONSKY: He lives in East Hanover, New Jersey. Is that within 100 miles of this court?

THE COURT: I don't know whether he lives there or not.

MR. KLONSKY: This was taken June 24, 1975. He was an employee of that third-party defendant.

THE COURT: He is how far away now, then?

MR. KLONSKY: Hanover, New Jersey.

THE COURT: I don't know the mileage. You will have to get somebody other than yourself on mileage. I don't know how far it is. Do you know?

MR. KLONSKY: I don't know offhand. I didn't expect this objection.

THE COURT:You always must expect objections from adversaries. That's why they're here.

MR. KLONSKY: May I have a moment to look at this as to why he took this deposition?

THE COURT: I don't know that there is any reason necessary.

MR.KLONSKY: I asked him on page 3, "Should you not indicate why he can't be available as a live witness?" Mr. Blanc said,"I will get to it."

THE COURT: What is this, page 32?

MR. KLONSKY: Page 3, your Honor. I inquired as to why he took his deposition at that time, why he would not be available.

THE COURT: That makes no difference. Maybe they wanted to get it before he died or something or moved to the West Indies.

MR. BLANC: If it please the Court, it was taken because he intended to go to Panama at that time.

THE COURT: There you are. I am going to sustain the objection.

MR. KLONSKY: I will take an exception.

THE COURT: Any other witness?

MR. KLONSKY: Yes, the plaintiff.

THE COURT: Call the plaintiff, then. We will need the interpreter again.

R I D E L C. R E V I L L A, the plaintiff herein, called in his own behalf, having been first duly sworn through the interpreter, testified as follows:

MR. KLONSKY: I offer the exhibits marked during the course of this deposition as well as the deposition itself.

THE COURT: I thought you had done that. Finish with that.

(Plaintiff's Exhibits 5 and 6 were marked for identification.)

DIRECT EXAMINATION

BY MR. KLONSKY:

Q Mr. Revilla, are you the plaintiff in this case?

A Yes, sir.

Q Where and when were you born?

A I was born in Cuba the 19th of May, 1930.

Q Are you a citizen of the United States?

A Yes.

Q What do you do for a living?

A I work as a longshoreman.

Q How long have you worked as a longshoreman in the Port of New York?

A Since 1961.

Q And by whom were you employed since 1961?

A For the company of Pittston Stevedores.

Q Now, on February 19, 1969, were you employed by Pittston on a job at Port Newark?

A Yes.

Q And what was your job that day, what were you doing?

A Discharging containers.

Q What time did you start that day?

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A 8 o'clock in the morning.

Q And did you work a specific hatch on that day?

A Yes.

Q Which one?

A Hatch No. 2.

Q How many hatches were on the ship, do you know?

A I can't give you figure, but the vessel was quite large.

Q Did any other gang work on that ship that day other than your own gang?

A No, sir.

Q How many cranes were in use that day?

A Only one.

Q And that was for the No. 2 hatch, is that right?

A That is correct.

Q As to No. 2 hatch, were there any winches or any booms of the ship itself?

A No, sir.

Q Was there any kind of equipment located there which would tangle up with a rope?

A No.

Q Now, did there come a time when you knocked off that morning for lunch and, if so, what time was that?

A We stopped at 12 o'clock.

Q And when you came back to work, which hatch did you go to?

A Hatch No. 2.

Q How much had you discharged that morning from Hatch No. 2, do you know?

THE COURT: What difference does that make, counselor.

Q When you came back at 1 o'clock, when your gang came back at 1 o'clock, did you go back to work?

A No, sir.

Q Why not?

A It was snowing and raining.

Q Did you come back to work later that afternoon?

A Yes, sir.

Q At what time?

A More or less around 3 o'clock in the afternoon.

Q When you came back at that time more or less 3 o'clock in the afternoon, was there any change in the weather than it had been at 1 o'clock when you knocked off?

A Yes.

Q How did it change?

A The rain and snow had stopped.

Q And did it continue to come back at any time

after 3 o'clock? 123A

A No, sir, only that it started to snow somewhat as soon as we started back to work.

Q Was there anything else besides snow that fell after 3 o'clock?

THE COURT: 5 o'clock?

MR. KLONSKY: Between 3 and 4:30.

THE COURT: Reframe your question.

Q Between 3 and 4:30, what is your best recollection as to what the weather conditions were?

A It was snowing a little bit with rain mixed and quite a bit of wind.

Q The rain was mixed with what?

A Snow.

Q What was your job in the course of discharging the containers that were involved in your accident?

A To help to put the bridle, the bridle which was to fall on top of the container.

Q How did you do that?

A One man holding it on each corner so that it would fall straight down.

Q Then what would happen?

A At the moment that I was going to close up the lock --

THE COURT: Wait a minute. Read that question, please.

(Question read.)

Q That is after the corners are on the container?

THE COURT: Ask your question again so we get it in one bundle. State your question now.

Q After you had positioned with the other man the corners of the bridle on top of the corners of the container, what was the next thing to be done?

THE COURT: To be done or what was done? To be done?

MR. KLONSKY: To be done.

A We would have to put the locks on.

Q How did you do that?

A Jumping up on top of the bridle until we reach the area where the lock is and to pull it back so that the container doesn't come out.

Q Pull what back? How do you lock the container?

THE COURT: Please speak up a little, counselor. It is difficult to hear you.

A With a piece which is on it which has two ropes.

Q Were there any other ropes besides these two ropes to lock the corners?

A No, sir.

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Q Under bad weather conditions in the past, did you have any experience with the crew of tag lines on the corners of the bridle?

MR. HOCKETT: Objection, your Honor.

THE COURT: What is the objection, counselor?

MR. HOCKETT: I will withdraw it.

A They would be used on occasions when more or less the container was one high. Only when it was one high, and when it was two high, then they would ask us to go up on top of the container to secure it.

Q I asked you under conditions of bad weather such as you had at the time of your accident, would there be any use of tag lines where they were two high?

THE COURT: Didn't he testify the only time when they were used?

MR. KLONSKY: I don't think he testified in context of my question.

THE COURT: Read the last question and the last answer, please.

(Record read.)

THE COURT: Next question.

Q Would you tell us where you were stationed at the time your accident happened?

A I was standing on the container which was not to

go out at that time.

Q What were you doing there?

A I was going to cross over the bridle in order to close up the lock.

Q Had you yet gone to the container that was to be discharged when your accident happened?

A I was on top of the container which was not going to be discharged.

Q And then what happened?

A The bridle moved and I felt it striking me in my stomach and I fell down.

Q How many feet?

THE COURT: What is the question, please?

MR.KLONSKY: How many feet did you fall down?

THE COURT: How many feet did you fall down?

A 16 feet.

Q Now, was there any line or any device or any appurtenances given to you to grab hold of to save yourself from falling?

A No, sir.

MR. KLONSKY: I have nothing further. Thank you.

THE COURT: Cross examination, Mr. Watson.

CROSS EXAMINATION

BY MR. WATSON:

Q Mr. Revilla, how far from the edge of the container that was not going to be discharged were you standing at the moment you were hit in the stomach?

A It must have been about a foot or so, more or less.

Q And when that bridle hit you in the stomach it knocked you right over the edge, didn't it?

A Yes.

Q And that's the only reason that you fell that distance of 16 feet, isn't it?

MR. KLONSKY: I object to that. That's argumentative.

THE COURT: No. It is causes.

MR. KLONSKY: It is argumentative on causes, your Honor.

THE COURT: No, overruled.

A If they had had the tag line on the bridle the way they were supposed to have had it, I would not have fallen.

Q You wouldn't have had time to grab hold of a tag line, would you, Mr. Revilla, when you suddenly got hit in the stomach?

A There wasn't any.

Q At the time you were hit in the stomach, you were just on your way to lock this bridle onto the container, weren't you?

A Exactly.

Q And at the time you were doing that, the bridle was already on top of the container?

A Yes, it was on top of the container.

Q And it was ready to be locked into place, wasn't it?

A Exactly.

Q Isn't it true that the purpose of the tag line is to help guide the bridle down as it is being lowered so that it will come down in the right position?

A Would you mind repeating that question, please.

MR. WATSON: Would you please repeat it, Mr. Reporter.

(Question read.)

THE COURT: Can you answer it yes or no?

A Yes.

Q And at the time just before this accident happened, the bridle was already in the right position on top of the container, wasn't it?

A Yes,sir.

Q And there was nothing further for you or your co-worker to do except lock that bridle into place and then get out of the way?

A The fellows who were below could not reach the rope that was there because it was too short.

Q What rope are you talking about?

A The bridle, which is the only one that would have it.

Q Are you talking about the rope that locks the bridle onto the container?

A Exactly.

Q And that rope was only about six to eight feet long, wasn't it?

A Exactly.

Q And because that rope was that length the stevedore always told you to go up on top of the container when the containers were two containers high, is that right?

A Yes.

Q And the other reason that you and your companion were on top of the container was to guide the bridle into the proper position over the four corners?

A That is right.

Q Now, Mr. Revilla, was there anything else that

caused you to fall over the side of that container down to the deck besides being hit in the stomach by the bridle?

A There was ice and water, quite a bit.

Q You said, did you not, that you were a foot or a foot and a half feet away from the edge of the container when you were hit?

A I did not say from the edge. I said from the bridle.

Q Mr. Revilla, when I asked you about fifteen minutes ago how far away you were from the edge of the container when you got hit, didn't you tell me a foot or a foot and a half?

A I understood it to mean the bridle.

Q All right. How far away were you from the edge of the container at the time that you got hit in the stomach?

A More or less three feet.

Q And isn't it true that when you got hit in the stomach with that bridle swinging around that you went right over the side and fell 16 feet?

A Yes.

Q Mr. Revilla, do you remember testifying in the office of Di Costanzo, Klonsky & Cutrona, your lawyers, in September, 1972, testifying about this case?

A Yes.

Q And you remember, don't you, that Mr. Amarante, who is standing right beside you now was also acting as your interpreter that day?

A Yes.

MR. WATSON: I want to interrogate him on a couple of questions. I have the transcript here for your Honor.

Page 26, line 8.

THE INTERPRETER: Mr. Watson, do you have one for me?

MR. WATSON: I do have one for you.

Q Page 26, line 8, your Honor.

Mr. Revilla, do you remember being asked this question and giving the following answer:

"Q Let me ask you the question again, Mr. Revilla. I want to know, you said that you were knocked off the top of the container by the bridle, is that correct?"

And you gave the answer:

"Yes, sir."

A I remember, yes.

Q Do you remember being asked that question and giving that answer "Yes, sir"?

A Yes.

Q Line 14. Do you remember being asked immediately following the following question and giving the following

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answer:

"Q Was there any other cause or any other reason why you fell off the top of the container?

"A No, sir, I saw nothing else."

Do you remember being asked that question and giving that answer?

A On this question, I do not remember.

Q You don't remember being asked that question and giving that answer in September,1972?

A Three years have since gone by. I can't retain in my mind all of these things.

Q Well, when you testified in 1972, that was only three years after the accident, wasn't it?

A Yes.

Q And this is now six years after the accident, is it not?

A Yes.

Q Wasn't your memory about the accident better three years ago than it is today?

A Possibly, yes.

Q Now, before you came and testified in court today, Mr. Revilla, did you read through or have somebody read through for you the transcript of your testimony of September 13, 1972?

A No, sir.

Q Did you ask your lawyers to see that testimony of September, 1972, before you came to court today?

A No, sir.

Q Mr. Revilla, when you went back to work at about 3 o'clock in the afternoon, what was the condition -- what were the conditions on top of the containers with respect to snow or ice or rain?

A There was ice, there was snow and water.

Q And that's at 3 o'clock in the afternoon when you went back to work, about 3 o'clock?

A Exactly.

Q Mr. Revilla -- this is page 16, line 14 of the same transcript -- do you remember being asked the following question and giving the following answer under oath on September 13, 1972:

"Q When you went back to work at 3 o'clock, did you go back up on top of the containers to hook them up?

THE COURT: What line is that on?

MR. WATSON: Line 14, page 16, your Honor.

THE COURT: Okay.

MR. KLONSKY: What about the two questions before that, Mr. Watson, in context, starting with line 10?

MR. WATSON: I would be glad to read that.

"Q When you went back to work at 3 o'clock was it still snowing?

"A It had already snowed a bit, light, very light."

Then if I may chronologically follow up, do you remember being asked the following question and answering the following question immediately thereafter:

"Q When you went back to work at 3 o'clock did you go back on top of the containers to hook them up?

"A Yes, sir."

MR. WATSON: You are going too fast, Mr. Interpreter. I have only asked the one question and the one answer.

THE INTERPRETER: I read the series of questions Mr. Klonsky asked to be read. Did you want those read, too?

MR. WATSON: Mr. Klonsky wanted me to read from line 10.

THE COURT: Mr. Watson is now examining. What lines are you asking about?

MR. WATSON: 14 through 23, your Honor. I have already read at Mr. Klonsky's request 10 to 13.

THE INTERPRETER: I already read those to the witness.

MR. WATSON: Now would you read 14 through 17?

THE INTERPRETER: I did that also.

THE COURT: Did he recall giving that answer to that question? You will have to ask him, counselor. You can't do it indirectly here.

Read them again to him.

THE INTERPRETER: Beginning from line 10, Mr. Watson?

MR. WATSON: If Mr. Klonsky wants, yes.

MR. KLONSKY: Yes. That's it.

MR. WATSON: The jury has to hear the questions, too. One at a time.

THE INTERPRETER: 20.

MR. WATSON: I am only up to 18. so if I may.

Q Question, line 18:

"Q At this time, about 3 o'clock, was there any snow on top of the containers?

"A No, sir."

Do you remember that question and do you remember giving that answer?

A This might have been a mistake on my part, confusing it with having worked on the vessel previous to this one.

Q What do you mean working on a vessel previous to this one?

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A On vessels previous to this ship.

Q Mr. Revilla, you know I never asked you any questions about work on other ships on September 13, 1972, don't you recall that?

A Yes, but you asked me a question and in the confusion I mistook it for another vessel. There was snow on the ship.

THE COURT: What other vessel do you say you mistook it for?

THE WITNESS: A vessel that we had worked aboard previous to this one.

THE COURT: Containers?

THE WITNESS: Either three days before or a week before, I think. Containers also, your Honor.

Q What was the name of the vessel?

THE WITNESS: I don't know. I don't remember.

Q Mr. Revilla, don't you remember that the ILA was on strike a week before this accident?

A Yes, sir.

Q So you weren't working on any ship discharging containers a week before this accident?

MR. KLONSKY: Your Honor, I believe there is some misinformation Mr. Watson didn't intend to put into his question. The strike didn't start a week before. It ended

a week vefore.

THE COURT: He is asking the questions, you aren't.

MR. KLONSKY: If he is basing it on information which is untrue --

MR. WATSON: Am I in error?

MR. KLONSKY: Yes.

MR. WATSON: When was the strike over?

THE COURT: I don't know what you are doing, Mr. Klonsky?

MR. WATSON: If I am in error, I would like to know it.

THE COURT: You will have your recourse if there is any error. Go on, Mr. Watson.

MR. KLONSKY: I have it here. This is the information I have.

THE COURT: Don't read it.

MR. WATSON: May I approach Mr. Klonsky privately?

THE COURT: You may show it to Mr. Watson.

MR. KLONSKY: Mr. Watson does not wish to put an erroneous fact in the question.

THE COURT: I don't think he does. Show it to him, will you please, and stop arguing about it. Let us get

on with it.

(Counsel confer.)

THE COURT: Don't comment.

MR. WATSON: I beg your pardon. I do not withdraw the question, your Honor.

MR. KLONSKY: May we have the question again, your Honor?

THE COURT: The last question, if you please, will you read it, Mr. Reporter.

(Record read.)

THE COURT: Answer the question.

A Two days before, yes.

THE COURT: I don't know what that means.

Q Did I ask you any questions at all, Mr. Revilla, on September 13, 1972, having to do with a ship you may have worked on two days before the accident?

A I don't remember any.

Q You don't remember my asking you any such question, do you?

A I don't remember.

THE COURT: Who has the original of this deposition?

MR. WATSON: I do, your Honor -- no, I don't have the original. Mr. Klonsky must have the original.

THE COURT: Where is it? Let's see it.

MR. KLONSKY: I don't have it.

THE COURT: You don't have it?

MR. KLONSKY: I do not.

THE COURT: Is it in the file? Would you look and see if it happens to be in the file? He evidently signed it, I must suppose.

MR. KLONSKY: It was not signed apparently.

MR. WATSON: May I approach the bench?

THE COURT: No, I don't want that.

MR. WATSON: It says original up in the corner of Mr. Klonsky's transcript.

MR. KLONSKY: Who wrote this?

MR. WATSON: My office did.

MR. KLONSKY: It was not signed. I only have one copy. It looks like a ribbon copy.

THE COURT: I want the original. There must be an original somewhere around these parts.

MR. BLANC: Point of information. The ribbon copy is the original.

Is that the one Mr. Klonsky has?

MR. WATSON: That is marked original by my office.

THE COURT: You can ask him questions in light

of that.

MR. KLONSKY: The copies are the same. It was not signed.

THE COURT: Give it to Mr. Watson, please, will you? He is entitled to look at it, if he wants to.

Are there any corrections on it, gentlemen?

MR. KLONSKY: There is no signature on it.

THE COURT: There is no signature, but I am asking were there any corrections.

MR. KLONSKY: No.

THE COURT: There are no corrections and no signatures. I don't know what the stipulation was. Maybe it tells.

MR. WATSON: It was supposed to be signed, your Honor.

THE COURT: There wasn't any waiver of the signature, then, Mr. Watson?

MR. WATSON: Not that I recall, your Honor.

THE COURT: Look at the paper. That will tell you.

MR. WATSON: It said it may be signed before any notary public with the same force and effect.

THE COURT: That is no waiver.

MR. WATSON: No, I didn't waive.

THE COURT: All right, go on.

Q Mr. Revilla, going back one more question, one more answer, page 16, line 21, do you remember being asked the following question and giving the following answer:

"Q Were the tops of the containers wet at 3 o'clock?

"A No, sir."

Do you remember being asked that question and giving that answer?

MR. KLONSKY: Your Honor, may I rise to object generally to every question pertaining to 3 o'clock when we had an accident which occurred an hour or more later.

THE COURT: He asked about 3. I will let it stand.

MR. WATSON: The gentleman on the stand has testified --

THE COURT: I said I would let it stand, Mr. Watson.

MR. WATSON: Thank you, Judge.

A I already have told you that it might have been some confusion on my part.

MR. WATSON: I have no further questions.

THE COURT: All right. Anything else, Mr. Klonsky?

MR. KLONSKY: Yes, your Honor.

REDIRECT EXAMINATION

BY MR. KLONSKY:

Q Mr. Revilla, not at 3 o'clock, but at 4:15 or so when you had your accident, at that time was there snow and sleet on the deck of the container?

A Yes.

Q Now, sir, the two ropes that are used to lock the bridle into the four corners, is there any reason why they could not have been longer than six to eight feet so that it could be maneuvered from the dock?

MR. HOCKETT: Objection, your Honor.

THE COURT: Sustained.

Q Were there any directions given to you or any of the other longshoremen to prohibit putting an extra length of rope on these locking ropes so that they could be maneuvered from the deck?

THE COURT: Sustained. It is the same thing in essence.

MR. KLONSKY: I take exception to your Honor's ruling.

THE COURT: You don't need to take exception. They are automatic in the federal courts.

Q Now, sir, are there occasions when containers two high have tag lines, in your experience?

A At times. 139A

Q What times would they be, or to amend the question, what conditions --

THE COURT: Let us go back if you are going to amend it. Question withdrawn. Now state it the way you want it.

Q What would the conditions be to prompt the use of tag lines when it is two high?

MR. HOCKETT: Your Honor, No. 1, I don't understand the question. No. 2, this man is not an expert who would be in a position to answer it, in any event.

THE COURT: I will allow the question but I think it is confusing, Mr. Klonsky, because these containers I have been told several times were -- what was it, each one was how high?

MR. KLONSKY: 8 feet.

THE COURT: And two are 16 feet. What does it have to be, three of them topped up together? I don't understand the question.

MR. KLONSKY: No, your Honor.

THE COURT: What is your question? Reframe it fully.

Q On your observations of the use of tag lines to guide the spreader onto the container where they are two

high --

THE COURT: I don't know what two high means.

MR. KLONSKY: We have been using that expression all during this afternoon.

THE COURT: That was a false use of the term, then. I can't change the past and you can't change it.

Q In the past when you observed the use of tag lines on containers which are one on top of each, each 8-foot high, what conditions prevailed at that time that prompted the use or caused the use of these lengthened tag lines?

MR. WATSON: I would object, your Honor, on the ground --

THE COURT: Sustained.

How many tiers of containers do you have? Is there any time when they have three?

THE WITNESS: There are times, yes, your Honor.

THE COURT: Is that the time you are talking about when it is too high? I don't understand. Ask your next question, if you want?

THE WITNESS: No, sir.

Q On this ship, according to the plan and according to your observation, did they have more than two high on deck or were they always two high?

THE COURT: I don't understand this question.

MR. KLONSKY: This ship shows the most containers they can have on deck, this exhibit.

MR. WATSON: May I suggest Mr. Klonsky is saying two high, t-w-o, meaning two containers high, not t-o-o.

THE COURT: I don't know what he is saying. I am confused by a request where he said they don't put more than two containers, one on top of each other.

MR. KLONSKY: On this ship, your Honor.

THE COURT: Ask your question once more and we will see. See if you can limit it.

MR. KLONSKY: Mr. Watson has pointed out where I have been in error on the spelling of that word.

Q On prior occasions where you had two containers one on top of another making it two high, t-w-o, when you saw the use of tag lines, what were the conditions that prompted them to use tag lines?

THE COURT: Wait a minute.

MR. HOCKETT: I object. He is calling for the operation of somebody else's mind.

THE COURT: Yes, sustained. He can't tell what induced somebody else to do something.

Q Mr. Revilla, if there were tag lines on the corners of these bridles, would you have had to climb on top of the container?

MR. HOCKETT: I object to the question, sir.

THE COURT: What is the objection now?

MR. HOCKETT: Hypothetical and speculative.

THE COURT: Yes, sustained.

MR. KLONSKY: I would like to be heard on that.

THE COURT: No, you are not going to be heard.

MR. KLONSKY: I have no further questions.

THE COURT: I have heard enough.

MR. WATSON: No questions, your Honor.

THE COURT: All right. Is that all? Any other questions now from anything?

MR. HOCKETT: None, your Honor.

THE COURT: You may step down.

(Witness excused.)

THE COURT: Do we need the interpreter any more?

MR. KLONSKY: No.

THE COURT: That means none of these witnesses who were called and who testified through the interpreter may be called on rebuttal, gentlemen. Otherwise you will have to ask Mr. Amarante to come back. How about it, Mr. Klonsky?

MR. KLONSKY: That's true. I now rest, your Honor.

THE COURT: I didn't ask you that. Is there going to be rebuttal and the use of any of these foreign speaking persons?

MR. KLONSKY: No, your Honor.

THE COURT: All right. That means you don't call any other witnesses on rebuttal.

MR. KLONSKY: Not those that were called this morning.

THE COURT: Or this afternoon.

MR. KLONSKY: No.

THE COURT: I will excuse the jurors for a little while. You may retire.

(Recess.)

THE COURT: Any motions, Mr. Watson?

MR. WATSON: Pardon, your Honor?

THE COURT: Any motions?

MR. WATSON: Of course, your Honor, yes. I am sorry. I was talking to Mr. De Orchis.

THE COURT: That is excusable, speaking to your associate. There is no law against that.

MR. WATSON: Your Honor, at this time at the close of the plaintiff's case, the defendant moves respect-

fully to dismiss the plaintiff's claim on the grounds that plaintiff has failed to make out a prima facie case on either the issue of negligence or on the issue of unseaworthiness.

I think it is hardly necessary for me to remind the Court about the nature of the testimony which we've heard. It boils down, however, to only one person who is trying to inform us why and how the accident occurred.

THE COURT: That goes only to the weight of the evidence.

MR. WATSON: The two fact witnesses, your Honor, Mr. Martinez and Mr. Canales, both say that they don't know why the plaintiff fell off the container. Mr. Revilla says that he was knocked off the container by a sudden upward, unexpected movement of the bridle. There is no proof in this case, and I don't see how there could be any, that American Export Lines, the only named defendant, was in any way responsible for that bridle having suddenly risen, as the plaintiff says, before it should have, before a signal had been given, before the bridle had been locked into the top of the container. The proximate cause of this accident and the only proximate cause which the jury could arrive at would be the sudden rising of the bridle and the blow in the stomach knocking him over the side. There is nothing that I can see that American Export personnel

could have done or should have done to have prevented this accident.

Furthermore, the same inevitable proximate cause points to a dismissal of the unseaworthiness count even if we are to assume that the crane operator, an employee of Hoffman, was for some reason inadvertently negligent or whatever you want to call it in lifting the bridle with its cra before having received the signal. I think the law is clear that the old doctrine of operational negligence giving rise to an unseaworthy condition does not apply to a single unforeseeable isolated act of negligence on the part of a non-employee of the ship owner. This case might have had s viability back in the pre-Usner days, but it does not any more because whatever that crane operator did he cannot in any way involve the owner of the ship for which he was working at the time. I just fail to see how the plaintiff has made out a case.

THE COURT: Do you want to give me any citations?

MR. WATSON: I can give you a citation on Usner which I believe is in my trial memorandum, your Honor, which is the case of the longshore winchman who lowered too soon and too fast on a draft and struck one of his fellow longshoremen on the head with a draft.

Up until that case was handed down, it had been

held in a number of decisions with which most defendant shipowner lawyers didn't agree which said that if there was an act of negligence by, for example, a longshoreman, that could create an unseaworthy condition on the ship. The Supreme Court finally put an end to that in the case of Usner v. Luchenbach Overseas Corporation and the citation which De Orchis has referred me to is 400 U.S. 494, case decided in 1970.

THE COURT: Do you want to say anything, Mr. Hockett?

MR. HOCKETT: Only to join in Mr. Watson's motion. I agree with the remarks made by able counsel for the shipowner.

THE COURT: Very well.

Mr. Blanc?

MR. BLANC: I would join in the objection on the basis that the plaintiff has failed to adduce any evidence to establish proof of any negligence or unseaworthiness on the part of the vessel.

THE COURT: All right. Now, Mr. Klonsky, what have you shown in respect to negligence on the part of the ship?

MR. KLONSKY: We are here concerned with a pre-1972 amendment to the Longshoreman Harbor Workers Act.

THE COURT: I understand that.

MR. KLONSKY: The law favored the plaintiff much more than it does if the accident occurred after the amendment.

THE COURT: That may be. I am not saying it is sufficient to create liability, however.

MR. KLONSKY: Usner states as follows in pertinent part: "The method of loading her cargo, or the manner of its stowage, may be improper. For any of these reasons, or others, a vessel might not be reasonably fit for her intended service."

Judge Potter wrote the Usner decision.

THE COURT: Don't read me that. Just give me the citation.

MR. KLONSKY: I will first give you a 1972 citation, Zinnel.

THE COURT: Give me the volume and page.

MR. KLONSKY: It is Zinnel, 457 Fed. Reporter 1094.

THE COURT: And the second one you have?

MR. KLONSKY: Usner itself. 400 U.S. 562.

I have other cases to refer to your Honor about the need for a line in these circumstances.

THE COURT: A need for a line?

MR. KLONSKY: A safety line, some sort of a guard.

THE COURT: A guard for what?

MR. KLONSKY: So no one would fall off from a height when handling cargo.

THE COURT: You mean they are supposed to have a guard at the top of a container?

MR. KLONSKY: Judge Learned Hand, which goes back to 1925, he says "Without a guard line we need no expert to show us that a case was presented which a jury must decide, as to the safety of the place where the intestate was ordered to work. Indeed, it seems to us hard to see how a jury could find for the defendant on this issue as well as on the issue of the absence of the line."

THE COURT: That may be on the deck. But on top of a container, I can't believe even Learned Hand would say it is applicable here.

MR. KLONSKY: He was talking about guard lines.

THE COURT: Is there anything aside from Learned Hand to that effect?

MR. KLONSKY: They didn't have containers in 1925.

THE COURT: They didn't have a lot of things.

MR. KLONSKY: The principle of law is if he is given an unsafe place to work he does not assume the risk. If something outside the control of the ship brings into play something that makes the ship unseaworthy --

THE COURT: You want to say anything, Mr. Blanc?

MR. BLANC: No, your Honor.

MR. WATSON: My only comment, if I may be allowed one word, your Honor, on the subject of safety lines or whatever it is Mr. Klonsky is telling us about, his own witnesses rejected that theory by saying it was never done and couldn't be done.

MR. KLONSKY: I think there was confusion on that, your Honor.

THE COURT: I don't know about the confusion but it does seem to me it is not at all reasonable at the top of every container there must be some kind of a guard line. It just seems the height of folly.

MR. KLONSKY: I do suggest there should be tag lines so they need not be on top of containers under these circumstances.

THE COURT: What good is that?

MR. KLONSKY: You operate from the deck of the ship, you don't have to go on top of the container. That is

the point.

THE COURT: Can they put the conveyor portion on from below? Don't they have to get up there to line it in?

MR. KLONSKY: No. You are working with tag lines on the deck and you control it as to how it is going on top.

THE COURT: There hasn't been any evidence on that before me today.

MR. KLONSKY: Several witnesses testified to that.

THE COURT: I don't recall specifically.

MR. KLONSKY: The plaintiff testified he saw tag lines.

THE COURT: I will reserve decision until tomorrow morning. If any of you have any other citations, I wish you would hand them to me or to my clerk. I am going to call the jury back. I will excuse them for the day.

MR. KLONSKY: I also ask the Court respectfully to look at the requests to charge which has citations.

THE COURT: I will look at them.

MR. BLANC: Am I correct the plaintiff rested?

THE COURT: He rested. There is no more

testimony from the plaintiff to go in. It is agreed by plaintiff's counsel that no one of the witness with whom an interpreter was utilized will be called.

Get the jurors in, please.

MR. WATSON: I just wanted to say, I am trying to add three hours to your clock, but I am not prepared to go forward this afternoon, your Honor.

THE COURT: I am not asking you to. I am going to recess until tomorrow morning.

MR. WATSON: Thank you. I didn't know what you were going to tell the jury.

THE COURT: Of course, this clock doesn't help.

MR. WATSON: It is three hours slow.

THE COURT: It has been that way for three or four weeks. This building is in the course of renovation. When it will be completed I don't know or that anybody knows, really.

MR. WATSON: Then we can all come and reset the clock.

THE COURT: You can reset the clock at that time and try to get some more courtrooms. This isn't exactly the most noble of the courtrooms.

Get the jurors in.

(Jury enters the courtroom.)

THE COURT: Members of the jury, as you know, the plaintiff has completed his case. There are certain legal questions which the Court is compelled to consider and I am going to let you go now in order that I may consider them. Come back tomorrow at 10 o'clock, please. Very well.

Heed my instructions.

(Jury leaves the courtroom.)

(Adjourned to Tuesday, December 2, 1975, at 10:00 a.m.)

Ridel C. Revilla

70 Civ. 2583

v.

American Export Isbrandtsen Lines, Inc.

New York, New York

December 2, 1975
10:00 a.m.

- - -

(Trial resumed.)

- - -

(In open court; jury not present.)

THE COURT: I want to say that I have considered the motion made by the defendants yesterday. This is my determination.

The motion to dismiss upon the entire case on the ground of inadequate proof is partially granted. Any claim, I have concluded, based upon the weather conditions is dismissed by reason of the fact that no proof of proximate cause has been shown as to this feature. Whatever other claims have been sustained by proof will remain for the jury's determination since questions of fact, I have come to conclude, as to this phase of the case remain.

It is so ordered.

Now you may continue with your defense,

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Mr. Watson.

MR. WATSON: Your Honor, the defendant rests.

THE COURT: Very well.

That means that we are ready for summations, does it not? I will take a short recess. The jury will have to wait. We will prepare for the summations.

Suppose I take down the time which is desired. It will be in inverse order of the openings, of course.

MR. KLONSKY: Your Honor, I wonder whether the other third-party defendants are going to sum up at all.

THE COURT: Very briefly. I told them that and you heard me.

MR. KLONSKY: I want to know if they intend to.

MR.HOCKETT: On behalf of Pittston I don't intend summing up.

MR. BLANC: Nor do I.

THE COURT: So it will just be the two main parties, Mr. Klonsky.

MR. KLONSKY: That is what I want to find out.

THE COURT: I want to know the time first from Mr. Klonsky. How long do you want?

MR. KLONSKY: I don't think I will take more than 25 or 30 minutes.

THE COURT: And Mr. Watson?

MR. WATSON: 20 to 25, your Honor.

THE COURT: Up to 25 for each one.

MR. BLANC: May it please the Court, I have to argue a motion in the Court of Appeals at 10:30.

THE COURT: You are excused. You don't have to be here.

MR. BLANC: My assistant will attend before I leave.

THE COURT: No summations, then, from either Mr. Hockett or Mr. Blanc.

All right, I want to be excused a few minutes to get ready for your summations.

MR. WATSON: Will we be going over the requests to charge?

THE COURT: Yes, I shall. Have you exchanged?

MR. KLONSKY: I have given him mine -- yes, I have his, we have exchanged.

THE COURT: Do each have the others, then?

MR. WATSON: Yes.

THE COURT: All right, see you in a few

gwbr

minutes.

(Recess.)

THE COURT: I will first consider the requests to charge. I assume that both plaintiff's counsel and defense counsel are ready.

1 is granted as charged.

2 is granted as charged --

MR. WATSON: Are these --

THE COURT: These are the plaintiff's.

3 is refused except as charged.

4 is refused.

5 is refused.

6 is granted as charged.

7 is refused except as charged.

8 is granted as charged.

9 is granted as charged.

10 and 11 are refused except as charged.

12 is refused.

13 is granted as charged.

14 is refused except as charged.

15 is granted as charged.

16 and 17 granted as charged.

18 refused except as charged.

19 granted as charged.

20 is refused.

21 is granted as charged.

22 is refused, that is damages.

23 refused except as charged.

24 is refused.

25 refused except as charged.

26 refused except as charged and 27 is granted as charged.

Any request by the plaintiffs?

MR. KLONSKY: No, but we do have an exception as to those you refused.

THE COURT: If you want to state it, you don't have anything automatically in that kind of exception.

MR. KLONSKY: I respectfully except to so many requests that appear in the requests to charge which have been denied.

THE COURT: Now, I turn to the defendants' requests.

1 through 7 granted as charged.

8 refused except as charged.

9, 10, 11, 12, 13, 14 and 15 and 16 and 17 -- that's 9 through 17 -- let's see about 18 -- 9 through 17 granted as charged.

No. 18 is refused. That refers to damages.

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Any exceptions from Mr. Watson or Mr. Klonsky?

MR. KLONSKY: I have some exceptions, your Honor.

THE COURT: State what they are.

MR. KLONSKY: As far as the first request to charge by the defendant, I don't believe the word "insurance" should be in the Court's charge. There would be a conatationof insurance which should not be in this case.

THE COURT: I said refused except as charged.

MR. KLONSKY: I don't know exactly how you will charge. Should I wait until you charge?

THE COURT: That is a common every day charge. The shipowner was not an insurer, he is not responsible for everything that happens. The no fault applies there.

Your objection is noted but I will not change my ruling.

MR. KLONSKY: The 14th request.

THE COURT: What did I say about that? I said granted as charges. What is wrong with that? You don't know what I am going to charge.

MR. KLONSKY: Am I making a fruitless objection, your Honor?

THE COURT: I don't care what you do, counselor,

except to the ruling I made, but I am not going to submit any proof for counsel to pass upon before the summations.

MR. KLONSKY: Then I have nothing to object to now. I will have to wait until I hear the charge.

THE COURT: Very well. Mr. Watson.

MR. WATSON: I have no exceptions to your rulings on my requests to charge.

THE COURT: And on his, your adversary's?

MR. WATSON: No exceptions.

THE COURT: Very well. So be it.

This is a draft of the special verdict. Will you pass those out. I will give this to the clerk and ask him to mark it a Court's exhibit. There may be some changes in this one.

xx (Court Exhibit No. 1 was marked for identification.)

THE COURT: If so they will be effectuated and fresh copies secured.

I think there is one change. In No. 1, after the word "American" I wish to insert "with respect to the operation of the bridle." That seems to be the only addition or change.

If there are any exceptions or suggestions, please let me hear from you.

MR. KLONSKY: Your Honor, may I respectfully request as to the first one, after the word "negligence" "to the slightest degree" should be added.

THE COURT: What is it you want?

MR. KLONSKY: After the word "negligence" in the next to the last line, I ask you add in the phrase "to the slightest degree."

THE COURT: I have said "in whole or in part." I am not going to change it. That is good enough. You don't need any further elaboration on that one.

MR. WATSON: Your Honor, I have a suggestion here, the elimination of 4 and 5.

THE COURT: What do you want to suggest?

MR. WATSON: I would withdraw my claim of contributory negligence on plaintiff's part.

THE COURT: You want to withdraw that? So that will take out 4 and 5, correct?

MR. WATSON: That would simplify it.

THE COURT: I take it you don't object to that one?

MR.KLONSKY: No, I don't.

THE COURT: You heartily support that. Out, then, on 4 and 5.

Any other change?

MR. KLONSKY: I wonder whether the Court will mention this to the jury.

THE COURT: I am not going to mention it, no. I am going to say there is no claim of contrib. I have to, Mr. Watson.

MR. WATSON: I never mentioned contributory negligence in my opening. Nobody mentioned that in this trial.

THE COURT: I don't know that it is necessary, then. If I don't charge that the defendant may prove -- may attempt to prove contrib, I don't know why I need to charge it. Youwill simply not refer to it, Mr. Watson.

MR. WATSON: That is correct, your Honor, I have never referred to that.

MR. KLONSKY: I except to that. I wish to refer to it. If your Honor directs me not to I have an exception.

THE COURT: He withdrew this from the case and it should be mentioned.

Well, I suppose the most agreeable thing, Mr. Watson, would be to have me mention it very briefly.

You have withdrawn the claim?

MR. WATSON: I have, your Honor.

THE COURT: Shall I say that, counselor?

Would that disturb you at all?

MR. WATSON: No, sir.

THE COURT: So be it.

Anything else?

Very well. You may get the jury.

Before I do that, I don't know that it's necessary to have the actual physical change of these. Maybe you had better get them now before we start the summations.

We will be delayed a few minutes while the revisions are done.

(Recess.)

THE COURT: The revised special verdict is ready and I will ask my clerk to give copies to Mr. Klonsky and Mr. Watson.

MR. KLONSKY: Your Honor, may I be heard on a motion I neglected to make at the closing of the case?

THE COURT: What is the motion now?

MR. KLONSKY: Directed verdict for the plaintiff.

THE COURT: Denied.

I think it would be helpful if I told the jury before your summations, and I will await your comments, that the matter of any cause of action based on the

weather is out of this case as a matter of law.

Any objection from you, Mr. Watson?

MR. WATSON: No objection.

THE COURT: Mr. Klonsky?

MR. KLONSKY: Yes, there is.

THE COURT: All right, I will wait until the charge, then. But it is out and I see no reason why counsel can't advert to it.

MR. KLONSKY: I don't see why. I don't think I should agree to something that is wrong as a matter of law.

THE COURT: It was done over your objection.

MR. WATSON: I intended to make reference to that in my summation.

THE COURT: You may. I have done it as a matter of law and you are entitled to the benefit of it before you sum up or when you sum up.

MR. KLONSKY: Do I have the same benefit on contributory negligence?

THE COURT: I will tell that that, too, so you both may be reasonably satisfied. I aim to please.

MR. WATSON: Your Honor, there is one thing that I believe I omitted to do and in the exercise of caution, in order to protect my rights under Rule 50(b) for

a motion for judgment notwithstanding the verdict, I think that section can be interpreted as requiring me, as a condition precedent to make a motion at the close of all the evidence.

THE COURT: You may make it now.

MR. WATSON: I would respectfully move at this time, your Honor, under Rule 50(a) and 50(b) for a directed verdict at the close of all the evidence, the defendant having rested without presenting any evidence. But I would renew the motion for a directed verdict as to the balance of the allegations of unseaworthiness and negligence being made against the shipowner, understanding that the Court has already stricken that relating to snow, ice, weather, freezing and other weather conditions.

THE COURT: Yes, I understand what your motion is. I shall have to deny it at this time.

Get the jury in.

(Jury enters the courtroom.)

THE COURT: Members of the jury, I want to explain we are starting at a later hour because of many matters of law and procedure which I had to take up before the summations begin and we are now about to have the summations.

I want to say two things about the status of the

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case at this time.

One, any basis of claim dependent upon weather conditions and so forth is out of this case as a matter of law determined by the Court.

Secondly, normally in a case such as this, the defendant has the right to claim contributory negligence and then it doesn't throw the case out, it just simply means there has to be an allowance for such contributory negligence on a percentage basis that may occur. That likewise is no longer in this case.

Now a word about summations. You heard the opening statements by the lawyers as to what they believed the evidence would show or would not show. This is the time, however, when each counselor, plaintiff and defendant, may tell you what they believe the evidence has shown or what it has not shown after the case has been tried. You have heard the case. There is no proof to be put in, no additional proof, by the defendant.

However, you must consider both the direct and the cross examination of all of the plaintiff's witnesses. That you must do.

Any basis for the summations must be the proof, the proof which was accepted, heard or exhibits which were admitted. Nothing else is viable, as they say these days,

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in regard to what you may consider.

First Mr. Watson for the defendant.

MR. WATSON: May it please the Court, Madam Forelady, ladies and gentlemen of the jury, worthy opposing counsel:

As Judge Levet has informed you, the defendant has rested, as we say in the law. The plaintiff rested yesterday afternoon, the defendant rested this morning without presenting any witnesses, any testimony or any proof. I will make further reference to that in my summation.

Now, you ladies and gentlemen who have sat on juries and who have deliberated to a verdict before must have realized when you so deliberated the responsibility that had been placed upon you whenyou retired to the jury room.

For the benefit of those of you, and I know there are some of you who have not deliberated in a jury room to arrive at a verdict, I would like to make a few comments.

There are very few occasions in our daily lives when we can in some way serve the country and further the objectives of this country, and our government as you know is divided basically into three branches, the executive,

the legislative and the judicial branches, and it only affords the every day person an opportunity to be of that service in the judicial branch because you sitting as jurors are participating in the judicial processes of this country and I happen to feel very strongly that as long as the judicial branch of the country is in good hands and being properly administered we are well on the way to preserving what we think is best in this country. What I am merely trying to tell you is that this is just, in a way, another lawsuit between a plaintiff against a defendant, but it is important to the plaintiff and it is important to the defendant and it should be important to you to give this case all the consideration that you can because that is your function and that is the function that has been assigned to you in the jury system. So give it your best and look on this responsibility as a serious one, as I am sure you will, and I think that for those of you who have not been on juries before, that when you retire to the jury room and start deliberating that you will understand what I am trying to get across to you at this point.

Now, it was obvious to you during what we call the voir dire, the questioning of prospective jurors, that we weren't looking for shipping experts, we weren't looking for stevedoring experts, we weren't looking for crane

operation experts, we were looking for every day people without bias, without prejudice, who would come in here into court and bring with them their every day common sense, their knowledge of people, their powers to observe people, to make judgments as to people and to listen and understand, to the best of your ability, the testimony that was given.

Under our system of law we don't on a maritime case put maritime experts in the jury box. We might have them on the stand but we don't put them in the jury box. So when you go into the jury room bring with you your every day common sense, your ability to judge people, to judge the credibility, the truthfulness of people. Your common sense can be applied to determine whether you think something is possible or not possible. And all that is hung on the framework of the testimony that you heard yesterday. Fortunately, you have, I believe, a reasonably simple assignment because we have only had one day's testimony. You are not in a situation which is necessarily difficult, having a trial go on weeks and weeks, how does a jury remember when he goes in the jury room what the first witness said four or five weeks earlier. You don't have that problem. It should be fresh in your minds.

As I told you a few minutes ago, the defendant rested on its case. The defendant did not put on any

proof. And the fact is, as you probably know, that a defendant, whether it be in a civil case or a criminal case, is not required to put in any proof, and my position basically is that I have heard the plaintiff and the plaintiff's witnesses and I am willing to put the case into your hands on the basis of that testimony alone, believing as I do in what has been commented upon as an advocacy position, in other words, I am an advocate, I am not a juror, so I am taking a position. I am representing my client, American Export, the defendant. It is my position that the plaintiff has not sustained his burden of proving that American Export Lines should be responsible or liable in this case.

Now, I told you on my opening that the plaintiff was suing the wrong party, suing the wrong defendant, when he sued American Export Lines to recover for what you heard on the witness stand yesterday, and, if anything, I believe, that even more strongly now and I trust that each of you has at least an inkling before you deliberate amongst yourselves, at least an inkling of what I meant when I said the plaintiff was suing the wrong defendant, because again I repeat, the only defendant thatthe plaintiff has sued, the only defendant who can be found liable to this plaintiff in this courtroom, is American Export Lines, the owner of the Sea Witch, aboard which Mr. Revilla, Martinez and Mr. Canales

were working. To the same extent Mr. Klonsky started out reading his case from the deck log book of the ship, I would like to make a brief mention of that. That is Plaintiff's Exhibit 1. There is an entry on the left-hand page -- and, by the way, if you want to see any of these exhibits when you are in the jury room, as I am sure the Court will instruct you, all you have to do is ask and it will be brought in to you.

The log book of the Sea Witch says 1630, February 19, 1968, Stevedore Ridel C. Revilla, age 38, Social Security No. so and so, address so and so, Newark, New Jersey, injured this date. Man claims after hooking up container on deck which was being lifted by shore crane, et cetera.

Man claims. And if you read that version of what the man claimed and then just cast your recollection back 24 hours and ask yourselves whether you heard any testimony that conformed to what is written in this log book, I think you will find that you didn't hear any such testimony.

So the deck log book, I would submit,this particular entry, is a recital of what was claimed at the time by the man himself, according to what it says. It says "man claims". And it is no more than that.

It doesn't say that his accident was witnessed by anybody in the ship's crew, there is no indication of witnesses whatsoever. It just says "man claims" such and such.

Now, the plaintiff has basically set up what we call two causes of action. He set up a cause of action alleging that the American Export Lines was negligent and that the negligence of American Export Lines was the proximate cause or brought about or caused his injuries, that is, the injuries he got when he fell off the container.

He has a second cause of action in which he alleges that those injuries from falling off the container were proximately caused, and I am sure the Court will charge you as to what proximate cause is, were proximately caused or brought about or caused by the unseaworthiness of the ship herself and her equipment. And again the Court will charge you, and please pay close attention to it, what constitutes unseaworthiness.

Now, these two allegations of negligence and unseaworthiness are directed towards three things as I see it. Now that the testimony about snow and ice and rain and the testimony of Mr. Zeltmann has been ruled out by the Court as a basis for recovery, we are left really with only three claims. One is the claim that the ship in some way should have had safety lines or safety nets around

the top of the container on which the plaintiff was standing so that he couldn't fall off.

The second claim is that there should have been what we have been calling tag lines long enough -- tag lines to the corners of the lifting bridle -- long enough so the man could have stood on the deck 16 feet below, two containers, and maneuvered the bridle into position from down there rather than being on top of the container.

And the third claim, and I am not really sure if this is a claim but it is in the case, the third cause of the accident, as I hear it from the witnesses, is that the bridle suddenly lifted without any signal to lift having been given by Mr. Canales, who was down on deck and whose job it was to signal the crane operator, and without any signal having been given by Mr. Martinez to Mr. Canales to indicate that bridle was locked in place and without any signal having been given by the plaintiff himself to anybody indicating that the bridle was locked in place and the signal to lift could be given.

The only trouble with that third theory is that the crane company has not been sued. It is only American Export Lines that has been sued. And I submit to you that you haven't heard one word of testimony, haven't heard one or seen one item of proof which would allow you to believe

that this crane was owned by American Export Lines or that the operator of this crane was in the employ of American Export Lines.

I think it is fair to ask yourself when you go into the jury room and discuss amongst yourselves -- that is why you are all put in there together -- you are not put in six separate rooms to come to your conclusion and then come out and see what you come up with. You are in there to discuss with yourselves. I think that when you discuss among yourselves, the first thing you are going to ask yourself is what was the real cause of plaintiff's fall, why did plaintiff fall off the container. And there is only one person who had the answer to that because you may recall that Mr. Canales saw nothing. All he knew was that he gave no hand signal to the crane operator. He had received no signal from above that the bridle was locked in place. And the next thing he knew he heard a noise and turned around to find that Mr. Revilla had fallen off the container.

Mr. Martinez, who was up on top of the container but at the opposite end from Mr. Revilla, saw no more than that the bridle was seen to rise suddenly without warning and without signal. He did not see the bridle hit Mr. Revilla.

When he was asked what caused Mr. Revilla to fall

he said he didn't know.

So that leaves only one person. That was Mr. Revilla. And if you remember Mr. Revilla's testimony, he said that he was knocked off the container because the bridle rose suddenly and struck him in the stomach when he was standing some three feet away from the edge of the container about to be discharged.

I would submit to you that there is no other proof as to why Mr. Revilla unfortunately was knocked off the edge of the container. He was hit in the stomach unexpectedly by the bridle which rose unexpectedly and was knocked off.

And you obviously will have to ask yourselves in the jury room whetherAmerican Expobt Lines, the defendant in this case, is to be responsible for this bridle having risen as it did without signal unexpectedly.

Now, the plaintiff has made, as I mentioned, claims about safety nets or safety lines, yet I didn't hear any of the three witnesses, Mr. Canales, Mr. Martinez or Mr. Revilla, cite any occasion on which safety lines or safety nets had been put around the edge of containers when the containers were two high -- and here I emphasize two high -- on the deck of a ship.

Mr. Canales, who was the signalman, giving

directions to the operation, testified that safety nets were not used when the containers were only two high. Furthermore, none of the three of the longshore witnesses we heard asked their own hatch boss, their immediate superior, another employee of Pittston, none of them asked the hatch boss to have safety lines, safety nets rigged. And you can ask yourself on this claim and on the tag line claim as well how much hindsight is playing a part in this case, how much what we call Monday morning quarterbacking is there going on in this case. You can ask yourself isn't it funny that at the time this work was going on none of the men involved asked for tag lines; at the time the work was going on none of the men asked for safety nets, but when they come into court as a plaintiff or as witnesses in support of the plaintiff, they are suddenly super-safety concious and they say they should have been there

The tag line theory is subject to attack just the same way as the safety net one is. As I said, none of the men asked for longer tag lines.

Mr. Revilla was quite frank and honest when he answered a question and said that tag lines aren't used when the containers are two high, again t-w-o, that when the containers are two high the stevedore, the employer, has the men go up on the container in order to lock the bridle

into place. If you are going to have long tag lines, thenyou will have to have long pulling ropes to activate the locking device which you recall everyone agreed were between 6 and 8 feet long, obviously not long enough so they could be handled from 16 feet, and yet all the witnesses agreed nobody had asked for a longer pulling rope.

The tag line, if there had been one inuse, would have played no part in the accident itself because at the time of the accident the plaintiff had already -- the plaintiff and Mr. Martinez together had positioned the cradle on top of the container other than locking and the plaintiff says he was about to lock it. So he would not, even if there had been a tag line there, been hanging onto a tag line at that time. The tag line, according to the witnesses, was designed to position the bridle on top of the container when the containers were one high, but this bridle had already been positioned. They had no difficulty in doing that. That was finished. They had come to a stop. And the rising, unexpected rising, of the bridle is what caused the accident. It had nothing to do with tag lines

And you may recall that I questioned Mr. Revilla and on the basis of earlier sworn testimony that he had given on September 13, 1972, and I asked him then, in September, 1972, "Let me ask you the question again, Mr. Revilla.

I want to know, you said that you were knocked off the top of the container by the bridle,"is that correct?

And his answer was "Yes, sir."

And I asked him the next question in September, 1972:

"Was there any other cause or any other reason why you fell off the top of the container?"

And his answer was "No, sir, I saw nothing else."

And when I asked him about that testimony yesterday, he conceded that he remembered being asked that question and giving those answers. And I would remind you that the interpreter on both occasions, in September, 1972, and yesterday was the same gentleman, Mr. Amarante, the gentleman you heard yesterday.

Now, I have a couple of minutes, I believe, and I would just remind you that there has been no proof in this case that the bridle was owned by American Export Lines. I think the only witness who testified on that said he thought it was owned by the stevedore but he wasn't sure. That,I believe,was Mr. Canales. Not one word of proof that the bridle was owned by American Export Lines.

Similarly, but stronger, there was testimony by all these men that tag lines were standard stevedore gear and were available in the gear room of the stevedore

on the pier, and this compounds that testimony in which they all admitted that they never asked for it. They didn't have to go to anybody on the ship to ask for tag lines. A word to the hatch boss was all it would take, "We want tag lines" or "We want safety nets," or "We want", whatever it is.

Now just one final word. When you go to the jury room, I suggest that you let the thought pass across your minds that what would this trial have been like and how would you have been deliberating if instead of having sued American Export Lines this plaintiff had sued the crane company.

I would suggest to you that the testimony would have been the same. You would have heard the same testimony, but I would also suggest to you that your deliberations in the jury room would be quite different, and that is why I repeat to you that in my opinion as an advocate the plaintiff has simply sued the wrong defendant and that there is nothing that you heard on the witness stand yesterday that would point to any liability on the part of my client, American Export Lines, and I am going to thank you for your attention. I am glad it was as short as it was. I will thank the alternates for having paid as close attention as the first six that were seated,

and I will ask you to go into the jury room, deliberate among yourselves, keep your minds open and arrive at a verdict. Thank you.

THE COURT: For the plaintiff, Mr. Klonsky.

MR. KLONSKY: May it please the Court, Madam Forelady, ladies and gentlemen of the jury:

Mr. Watson misconceives this lawsuit and brings this misconception to bear on what he just said at the beginning of his summation and at the end of his summation. He said we sued the wrong party. Mr. Watson has brought in the crane company as a third-party defendant and has brought in the stevedore as a third-party defendant. He is a conduit through which a plaintiff must go to get to where the just burden lies in this case.

MR. WATSON: Your Honor, I would object to that.

THE COURT: You may disregard that, members of the jury.

MR. KLONSKY: I wish to point out that we sue for a warranty of seaworthiness. That has not yet been defined for you. A warranty of seaworthiness is only against a shipowner. It is a species of liability without fault. It is non-delegable. The shipowner can't say that something --

THE COURT: You are getting into the law. The Court will charge the jury on what unseaworthiness is.

MR. KLONSKY: I merely respectfully ask you to keep in mind that the word non-delegable is in the charge as his Honor told us he would charge it. It means he cannot blame in the first instance any other party, that he adopts the equipment that was brought aboard the ship or the equipment that should be brought aboard the ship.

MR. WATSON: I must object.

THE COURT: Yes. The Court will charge the jury on the law. You are not to specify what the law is.

MR. KLONSKY: Your Honor, I have to put the facts on the framework of the law.

THE COURT: Confine yourself to the facts, counselor.

MR. KLONSKY: The facts are as follows:

A man was on top of a container 16 feet high on a ship that was on navigable waters and fell off that precipice without any provision for his safety. That is a fact. If there had been guard lines or tag lines sufficient for that maneuvering from the deck or even another three to five feet for the lines that control the twister locks there would be no need for him to have been up there in

the first place. The fact there is this precipice, the fact there is no provision for his safety is more than enough to prompt liability in this case. You have the testimony of Martinez, his partner, you have the testimony of Canales, the signalman. They pointed out to you that at times they had observed these tag lines. The fact that it may or may not be a custom in the port to provide tag lines does not deny the proof that under these circumstances common sense would have dictated they should have been there to prevent a man to go where the spreader was located to be controlled by a man on the dock who could not see what was going on. Instead, if they had just put another three or five more feet on the pecker lines so that a man at least five foot tall from the deck could have pulled on them, there would have been no need for the plaintiff to have been where he was and where he was struck.

Please excuse me for my emotional reaction to what was going on but it is something I can't control but I wish to say this to you. Mr. Watson has been a gentleman through this trial. I have nothing to say derogatory about his summation except where I have indicated to you now. But I do say this to you: You are the community's conscience. It is for you to determine whether this man who has only this opportunity to come to court has

been rightfully treated and should be rightfully treated. We do not ask for prejudice, we do not ask for passion, all we ask for is common sense and the application of your God-given qualities in that respect to what happened to this man who is akin to a seaman, who was put on top of a precipice, as it were, 16 feet high and then say he should have asked for a tag line, he should have asked for more rope. That is not his obligation. It is the obligation of people who have a non-delegable, continuing and absolute obligation to provide him with a safe place to work, and that is the ship. It is not the crane operator, it is not the stevedore, it is the ship that initially owes that liability to this plaintiff and if you say otherwise you fly in the face of what substantially occurred here. This man who could hardly speak English is listed in a self-serving statement in the log as having claimed he was struck by the container itself. Obviously that was not true, he was not struck by the container itself, it was just the bridle.

Where is the obligation of proof forthcoming from the defendant --

THE COURT: Wait a minute, counselor.

You know very well that the defendant does not have to prove or disprove anything. So you members of the jury may disregard this last statement.

MR. KLONSKY: The defendant does not have to prove my burden of proof, of course, I have that burden of proof, but there is an obligation of going forward with the evidence, there is an obligation to explain why key witnesses who could have helped you in your deliberations at the conclusion --

THE COURT: You may disregard that also, members of the jury. That is not so as a matter of law.

MR. KLONSKY: I can only conclude now. You have heard the testimony that was given by these witnesses. You have only one day's recollection to go by. You heard that they stated that there was ice on top of the containers, you heard that they stated --

THE COURT: That is out of this case, counselor, and you have been told that.

MR. KLONSKY: That is not weather, that is condition.

THE COURT: No, it is not in the case any longer. You may not refer to it. As a matter of law, it is out.

MR. KLONSKY: I will conclude as follows: This defendant has brought in third-party defendants. They are not part of your case, but they are part of the entire lawsuit and it will fall properly in the judgment of this

court and please listen to these requests to charge and the charge as the judge gives it to you. See the posture the plaintiff is in. Listen to the word non-delegable which means only the ship initially must respond and conclude as you should without any act of cruelty on your part that this plaintiff is deserving of going on for damages which is the only place he can get it, in this courtroom. Thank you.

THE COURT: Very well. It is now a quarter of twelve. I want to review my charge before this afternoon. I am going to ask you to come back at 2 o'clock this afternoon. In the meantime, continue to heed my instructions.

2 o'clock.

(Luncheon recess.)

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AFTERNOON SESSION

2:00 P. M.

(Jury present.)

THE CLERK: The Court is about to charge the jury. Any spectator who wishes to leave may do so now.

The United States Marshal will now secure the courtroom.

THE COURT: I want to say at the beginning, ladies and gentlemen of the jury, if at any time during the charge any one of you does not hear me, please raise your hand and the clerk will be watching and he will call it to my attention if I don't see it.

Now, Madam Foreladv and members of the jury, you are, as you know, about to enter upon your final function, to decide, as jurors, the facts in this case. At this time, however, you will consider only the question of liability, if any, of the defendant shipowner to this plaintiff.

You of course are the sole and exclusive judges of the facts. You pass upon the weight of the evidence, the credibility of the witnesses, and you determine the reasonable inferences to be drawn from such conflicting evidence as there may be in this case.

Now, it is my duty to instruct you as to the

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law and, in turn, it is your duty to accept these instructions as to the law and to apply them to the facts as found by you in the course of your deliberations.

In your determination of the facts, you must rely solely upon your own recollection of the evidence. I might give you a short footnote at this point because I shall later explain that you may under certain conditions ask for the reading of any testimony and you may ask for exhibits.

What I have said from time to time and what I may say in this charge or what counsel may have said during their respective summations is not to be taken by you in place of your own recollection of the facts or the evidence in this case. No comments by counsel or by the Court constitute evidence. You are to draw no inferences from them.

However, during the course of this trial I have been forced to pass upon questions concerning the admissibility of evidence and upon whether or not certain questions may be answered.

As I told you, I believe, in the beginning, your duty is to pass on the facts; my duty is to pass upon whether or not certain questions may be answered; in other words, what facts may be relevant and proper for you to

consider, and you are to draw no conclusions whatsoever with respect to my rulings. They have been made and those are the guidelines by which you must consider the facts.

Neither are you to be concerned, members of the jury, by questions asked by the Court, nor that the Court asked questions. These questions were asked solely to elicit or clarify facts at issue. Nothing that the Court said is to be construed to indicate what your determination should be, except, of course, that I expect you to follow these instructions.

You must completely ignore answers by witnesses made either voluntarily or in response to a questions where such answers or portions of the same have been stricken. Then they form no part of the evidence in the case and they may not be considered by you in the determination of your verdict.

The statements made by the attorneys in the summations, of course, are not facts. The evidence comes only from the testimony of the witnesses on the stand, from portions of depositions which may have been read and from any exhibits admitted into evidence.

Now, when you go into the jury room to deliberate on this case you of course are expected to approach that duty coolly and calmly, without emotion,

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and both direct and cross examination must be considered by you.

You may draw certain inferences from testimony, but you are not permitted to draw inferences from other inferences. No verdict is to be based, members of the jury, upon speculation or conjecture.

Now we start here in this set of instructions with the fundamental principle that the plaintiff, having made this charge, has the burden of proving th material allegations of his complaint by a fair preponderance of the credible evidence.

Now, this term "fair preponderance of the credible evidence" means the greater weight of the evidence. It refers to the quality of such evidence rather than merely the number of witnesses. It means that the testimony on the part of the party on whom the burden rests must have more convincing weight than that opposed to it.

You may say that a fact was proved by a fair preponderance of the evidence when all of the credible evidence tends to persuade you to believe what the witness or witnesses have said as against any other testimony that may have come into the case.

As I have said, the burden is on the plaintiff.

Thus, in this case, if, after considering all the evidence, you find that it preponderates in favir of the plaintiff, then he has sustained his burden of proving his case by a fair preponderance of the credible evidence. If the evidence is evenly divided, the credible evidence, then the plaintiff has failed to sustain his burden; and, of course, if the evidence is in favor of the defendant, then the plaintiff has failed to sustain his burden and he cannot recover.

Now I charge you that the defendant has no obligation to come forward with any proof. The defendant does not have to prove or disprove anything. Whether it does or not, the fact remains that the defendant is entitled to a verdict in its favor if the plaintiff fails to sustain his burden of proof, which is to sustain his claim or claims by a fair preponderance of the credible evidence.

Now I must charge you that the mere fact that an accident occurred does not entitle the plaintiff to a verdict against the defendant. Liability follows not from a mere injury or from the happening of any accident but from the breach of some duty owed by the defendant to the plaintiff.

Now, in this case, of course, the defendant

shipping company is a corporation. Obviously a corporation can act only through its officers, employees and other agents. Consequently, any act or commission by an agent or employee of the corporation, if it is done within the scope of his employment, is held in law to be the act of the corporation he represents and it is bound by his acts.

Now, the plaintiff here seeks to recover against the defendant shipowner on two alternative grounds. This of course is a suit by this plaintiff against the shipowner and against no other party whatsoever, no other person or corporation, first, on the ground of negligence, and second, on the ground of unseaworthiness, of which I shall speak later.

Now, the plaintiff contends that the shipowner was negligent because the shipowner permitted a dangerous method of discharging cargo with respect to the operation of the bridle.

Now, the plaintiff's second theory of recovery is that the shipowner was liable for providing a seaworthy vessel.

The plaintiff contends that the continued negligent conduct of those responsible for discharging the cargo constituted an unseaworthy condition. The

plaintiff also contends that the ship was unseaworthy because the shipowner failed to furnish proper equipment for the discharging of cargo. Just what that meant, I don't know that I can state.

I shall later explain or attempt to explain both the negligence theory and the unseaworthiness theory.

By way of defense to the plaintiff's claim, the shipowner contends that at all times the ship was seaworthy and that the shipowner was not negligent in any respect. The defendant denies that it permited the cargo to be discharged in a dangerous manner, and further denies that the shipowner is responsible for any negligent act in connection with the discharging of the cargo.

The defendant also contends that by plaintiff's own admission the only cause of his alleged fall from the top of the container was the unexpected movement of the bridle, which he said hit him and knocked him from the container. The defendant contends that it cannot be held responsible for whatever act prompted the alleged unexpected movement of the bridle.

Now I will attempt to define negligence. Negligence, in simple terms, is the doing of some act which a reasonably prudent person would not do, or the failure to do something which a reasonably prudent person would

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do under all the circumstances of a given case. It is the failure to use ordinary and reasonable care under a given set of circumstances.

Now, ordinary care is that which reasonably prudent persons would exercise in the management of their own affairs in order to avoid injury to themselves or to their property or to the person or property of others.

Under this negligence doctrine, a shipowner is liable for negligence when the owner knowingly or carelessly breaches any duty, no matter how slight, to the plaintiff.

Among these duties which the shipowner owes a longshoreman is the duty to furnish him with a reasonably safe place to work and to perform his duties.

In order for plaintiff to establish negligence, he must prove by a fair preponderance of the credible evidence, first, that there existed a hazardous, a dangerous, condition with respect to the discharging of container cargo from the main deck of this vessel, the Sea Witch, at about 4:15 P. M. on February 19, 1969, specifically, with regard to the hooking up of cargo to be hoisted ashore by means of a crane on shore; second, that the defendant had notice, that is, either actual or constructive notice, of this allegedly unsafe condition

prior to the plaintiff's accident; and third, that the defendant did not warn the plaintiff concerning the allegedly dangerous condition or take steps to remedy that condition; and fourth, and this is equally important -- this is applicable to the negligence and the unseaworthiness claims -- that the unseaworthy condition was the cause in whole or in part of the injuries sustained by the plaintiff.

As to notice, the term "actual notice" means that the defendant or its agents knew of the alleged unsafe conditions; and secondly, the term "constructive notice" means that the allegedly unsafe condition or conditions existed for a sufficient time prior to the happening of the accident and was in a place such that the defendant should have known about that condition or conditions.

Concerning the requirement of notice of a hazardous condition, where a shipowner knows, or should have known, that the stevedore's method of discharging cargo did not conform to the standard of reasonable care and that this non-conforming method as to the discharge of the cargo contributed to creating a hazardous condition, the shipowner may then be negligent for permitting this continued allegedly improper manner of discharging cargo by the stevedore.

Now proximate cause. I shall attempt to

explain that. An injury or damage is proximately caused by an act or failure to act whenever it appears from a preponderance of the evidence in the case that the act or omission to act played any part, however small, in bringing about or actually causing the injury alleged. That requirement is present whether it's the negligence theory or the unseaworthiness theory.

It is the continuing duty of the defendant, I charge you, to use ordinary care under the circumstances to furnish the longshoreman with reasonably safe equipment and a reasonably safe place in which to work aboard the ship, and to use ordinary care under the circumstances to maintain and keep the place of work and the ship's equipment used in carrying out the work in a reasonably safe condition.

Now, this continuing duty to use ordinary care under the circumstances owed by a shipowner to a longshoreman while aboard the ship exists independently of, and separately from, every and any similar duty owed to the longshoreman by others, including the stevedoring company as the employer, and cannot be transferred or shifted by the shipowner to anyone else.

If the ship or ship's equipment is in a dangerous condition and the dangerous condition is not

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readily apparent to a person acting upon his own behalf, exercising ordinary care and caution under the circumstances, and if the shipowner has actual knowledge of the dangerous condition, or if the dangerous condition is such as would have been known to the defendant in the exercise of ordinary care under the circumstances, then the law imposes upon the shipowner the duty to give the longshoreman reasonable warning of such danger, or to remove the danger.

But the shipowner, I charge you, and you will remember this, is not charged with knowledge of defects which reasonable inspection would not disclose, and the shipowner is entitled to assume that any longshoreman will see and observe that which would be obvious through use of an ordinary person's senses.

So there is no duty on the part of the shipowner to give the longshoreman notice of an obvious danger, or a danger that would have been apparent to a reasonably prudent person exercising ordinary care under the circumstances shown by the evidence in the case, in other words, there is a duty of the longshoreman to see and act accordingly.

As I have previously stated, the defendant shipowner has a non-delegable duty to furnish the plaintiff

with a safe place in which to work on the vessel. Now, this does not mean, as I have attempted to explain, that the shipowner has the duty to furnish an absolutely safe place in which to work. The standard of care is only that of reasonable care under the circumstances to see that longshoremen aboard the vessel have a reasonably safe place in which to work.

In the instant case, I charge you that neither the shipowner nor its employees had any duty to inspect to see that every bridle was locked in position on every container. At most, a general inspection of conditions on board rather than minute, continuous supervision of every detail entrusted to a responsible stevedoring company is all that was needed to satisfy the duty of reasonable care under the circumstances to furnish the plaintiff with a reasonably safe place in which to work.

The defendant shipping company here of course is not an insurer of the safety of longshoremen. It is not obliged to furnish the plaintiff with an accident-proof ship. The standard here is the exercise of reasonable or due care under normal circumstances.

A longshoreman, I charge you, must exercise reasonable care in performing his duties aboard a vessel. The defendant shipowner is not obligated to instruct an

experienced longshoreman in the performance of a routine job. In exercising care for his own safety, a longshoreman is dutybound to make use of his own faculties and senses to observe and avoid dangers and injuries to himself, and he must be presumed to know what the ordinary use of his faculties and senses would make apparent to him.

If a longshoreman is injured in one of the normal hazards of his calling without fault of anyone else, and if the ship is seaworthy, he must bear the loss himself. However, a longshoreman does not assume the risk arising in whole or in part from the negligence of a shipowner. As I have said, the defendant has a continuing duty to use and to care for the safety of the longshoreman and to exercise reasonable care for that longshoreman's safety.

Although a longshoreman never assumes the risk of injury from any negligence of the shipowner or any other person, it is a fact of common knowledge that in almost every occupation aboard ships there is some inherent and unavoidable risk which does not arise out of either negligence or unseaworthiness; and a longshoreman, when he enters upon his calling, must assume all inherent and unavoidable risks of his occupation.

If you should find from a preponderance of the

credible evidence that negligence on the part of the stevedoring company, or of its employees, including the plaintiff, was the sole, that is, the only, proximate cause of the accident, then the plaintiff cannot recover from the defendant shipowner on his negligence claim.

Similarly, if you should find that negligence on the part of the crane operator was the sole proximate cause of the plaintiff's accident, then the plaintiff cannot recover against the defendant ship.

Or if you should find that the sole cause of the accident was the combined negligence of the stevedoring company, or its employees, and the crane operator, then there should be no recovery granted against the shipping company.

This does not mean, however, that the defendant cannot be found liable under the doctrine of seaworthiness. Negligence on the part of the stevedoring company may create a condition of unseaworthiness for which the defendant shipowner might be liable. I shall instruct you shortly on this doctrine of seaworthiness, which is a separate concept of liability.

As Ihave indicated, perhaps, the plaintiff here does not have to prove both negligence and unseaworthiness. It is sufficient if he proves either one or the

other as I have defined it.

The shipowner's liability for failure to furnish a seaworthy vessel is a peculiar species of liability and is not limited to conceptions of negligence. They are two separate theories.

Now, in respect to this claim, that is, unseaworthiness, the owner of the vessel has an absolute and a non-delegable duty to provide a seaworthy vessel. This means that the defendant is obligated to furnish and maintain a vessel that is strong, staunch and properly equipped with reasonable, safe and suitable machinery, equipment and appurtenances and safe working conditions. It is reasonable fitness for the particular voyage, or, directed to the present case, reasonable fitness for the particular use which the plaintiff was making of that portion of the ship at the time of his alleged injury.

For a vessel to be found unseaworthy when injury has occurred, the defective condition or conditions need not be such as to render the entire vessel unfit. If a defective condition is found on the ship and it was one of the proximate causes of an individual's injury, as I have defined proximate cause, the ship is unseaworthy.

In connection with this doctrine, you must remember that this duty to provide a seaworthy vessel does

not depend at all upon the negligence of the shipowner or his agents. The character of this duty is absolute and is essentially liability without fault. Due diligence does not excuse unseaworthiness.

Further, the liability of a defendant shipowner on the ground that the ship was unseaworthy does not depend upon a showing that the defendant, or its employees, knew or had reason to know that a condition relating to the unseaworthy condition about which this plaintiff complains existed.

However, I must charge you that the mere fact that a longshoreman may have been injured does not mean that his place of work was unsafe or that his working conditions were not proper.

Although a shipowner is absolutely liable for failure to provide a vessel that measures up to the standard of the law, that standard I charge you is not perfection but only reasonable fitness to the same extent as other ships may provide.

On the other hand, the longshoreman does not assume the risk of injury arising in whole or in part from a shipowner's breach of duty to provide a seaworthy vessel. It is so even when the longshoreman works under conditions of obvious danger, if the longshoreman's injury, I say,

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is proximately caused by the ship's failure to provide him with a reasonably safe place to work and reasonably safe conditions.

The question, therefore, insofar as this claim of unseaworthiness is concerned, is whether or not the ship was reasonably as fit for service as other vessels. The shipowner is not obligated, I have attempted to say, to furnish an accident-free ship.

Although the shipowner has no duty to oversee, supervise or direct the methods by which a stevedoring company and its employees perform their work, relinquishment of control over the vessel to an independent contractor -- I will say the stevedoring company -- does not relieve the owner of his obligation to provide a seaworthy vessel, liability for which continues even after control of the ship may have been surrendered to the stevedore.

Regardless of who may be in actual possession, operation or control of a vessel or any part thereof, liability for an unseaworthy condition remains on the shipowner.

Now, I have already charged you on the rule with respect to negligence. You may find that the defendant was not negligent or that the sole proximate cause of

the alleged accident was the negligence of another. However, this does not necessarily relieve the defendant of liability, if any, for an unseaworthy condition. The vessel may be rendered unseaworthy by continued negligent -- I emphasize the words "continued negligent" -- conduct of those persons engaged in discharging cargo.

I also charge you, nevertheless, that a single unforseeable act of negligence by a longshoreman or by a crane operator does not render the vessel unseaworthy. In other words, an isolated act of negligence by any one of the plaintiff's fellow longshoremen or by the crane operator or its employees does not constitute an unseaworthy condition of the vessel.

I also must remind you that if you should find an unseaworthy condition existed -- and I do not indicate one way or the other -- there is no basis for liability unless, as I have stated to you, you are persuaded that such unseaworthiness was a proximate cause, in whole or in part, of the accident complained of. The same principle I have said applies under the negligence theory.

Now, after these general instructions as to the applicable law, I apologize I have to do it, but it is the nature of the beast, I approach a consideration of

some of the facts in this case. Please bear in mind that this is only my recollection. What I may say or what counsel may have said is not to be taken in place of your own recollection of the facts or evidence in this case.

It is your duty to consider all of the testimony given by all of the witnesses, and the fact that I might advert to certain testimony and may not refer to other testimony does not mean that any testimony whatsoever should be disregarded.

I refer now to the first of the plaintiff's witnesses, Angel Canales, a longshoreman for 18 years and a hold man on this February 19th date. He testified for plaintiff in substance as follows, and I am leaving out any reference to the weather because that is out of this case, and I am not referring at all to claims of contributory negligence because that is likewise out of this case.

He said that at the time of the accident he was a signalman and it was his duty to give signals to the crane operator. He said there were no safety nets. However, it may be noted that there was no testimony, as I recall it -- you must determine this -- from any of the plaintiff's witnesses that safety nets were either necessary or were customarily used on other ships in similar situations.

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He stated the size of the container was 8 by 20 by 8. He said that there were no tag lines. However, as I recall it, there was no proof from the plaintiff that tag lines were necessary or were used on board any other vessel.

Mr. Canales declared that he did not know what caused the plaintiff's fall, that no signal had been given by him by either the plaintiff or his co-workers to the effect that the bridle was locked.

He also said that he, Canales, gave no signal to the crane operator to lift the container.

On cross-examination he stated that the tag lines are stevedoring gear and that they were available and were located in the stevedore's gear room. He said that the tag lines were used on some occasions but he did not specify exactly when. He conceded that the gear which was being used on that day was the usual gear as used under such conditions.

Then we had the testimony of Rafael Martinez, another longshoreman for some 16 years, who stated in substance as follows: He was working on the ship at the time of the removal of the containers to the shore. He was working as plaintiff's partner on the occasion on the top of the second tier of certain containers and next to a container which was about to be removed. He

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said that the bridle moved -- he saw the bridle move and saw plaintiff fall. He said he did not see or hear any signal with reference to moving the bridle.

On cross-examination he said that the bridle did move and it came out and up. He did not know, he said, what caused the accident to the plaintiff.

Now we have the plaintiff's testimony, which was in substance as follows: He had been a longshoreman in the Port of New York since 1961, and on this date, February 19, 1969, he said he was unloading containers on this ship, the Sea Witch, at Port Newark at the No. 2 hatch. At 1:00 P. M. the longshoremen returned after lunch but they did not go to work immediately. Some time later they again began work on the deck with respect to the removal of the containers.

Plaintiff stated at the time of the accident he was standing on one of the corners on the top of the upper container and that the bridle moved and he felt the bridle strike him in the stomach causing him to fall.

On cross-examination, defendant's attorney read from plaintiff's deposition taken on September 13, 1972, at which time the same interpreter who was used at the trial, Mr. Amarante, was acting in that capacity. During that deposition, plaintiff was asked if there was

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any other cause or reason why he fell off the top of the container other than that he was hit by the bridle, and he said no, sir.

Now I refer to one of the exhibits which are before me and may be asked for by you, and I have Exhibit 1, which is the log. I couldn't quite read it myself but I had my clerk write out what was stated.

"Man claims after hooking up container on deck which was being lifted by shore craine, the container turned, man grabbed a rope on lifting gear to avoid being knocked off container. The rope was wet and the man's hands slipped off rope causing him to fall off the container to the deck below."

There is another exhibit which is a plan of the vessel, and there is another exhibit I might mention which I believe has a diagram which shows the way these bridles are attached to the containers. You may examine anyone of those exhibits.

So much for my attempt to give you a resume of the proof in this case. However, remember that it is your own recollection which must prevail. If I have mentioned certain facts and have omitted to mention others, there was no intent on my part whatsoever to emphasize or to minimise.

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It is your duty to consider all of the testimony as I have stated it. If I have perchance made any reference to the testimony in this case which does not coincide with your own recollection, at least after you have had it refreshed by any reading which you ask for, you are to have no hesitancy in disregarding any reference by me and, of course, relying on your own recollection.

No statement by me during this charge is intended to influence your judgment. As I previously stated to you, you are the sole and only judges of the credibility of each and every witness as you are of the facts.

How do you determine the proof and how do you determine the credibility of the witnesses? How do you appraise their testimony? Well, you have to use your own everyday common sense. You saw the witnesses on the stand, you have observed the manner in which each one testified in answer to the questions, and you may ask yourselves how did this witness or that witness impress you, did the witness appear to be testifying frankly, fairly and truthfully.

Now, what degree of credibility you give a witness must be determined by his conduct and manner in which he has testified and his relationship or his interest in the outcome of the controversy.

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You obviously may take into consideration the interest which a witness has in the determination of the case. The plaintiff obviously is an interested witness. I don't believe any of the other witnesses were employees of the defendant. If so, they would have been possibly interested, but I don't think they were.

However, an interested witness is not necessarily unworthy of belief but it is merely one of the factors which you must consider in connection with a determination of the weight and credibility to be given to his testimony.

Now, in other words, ladies and gentlemen of the jury, you have to apply the test of credibility to these witnesses and use your own good common sense, your everyday experience, and act exactly as you would if you were determining your own affairs in an important decision which you may make.

Now, you came into this jury Monday and I assume without any preconceived ideas or any bias or information which you might carry over into this trial, and therefore I must assume that you will determine this question on liability, which is what you are to do today. What you now know about this case should have been learned only from the witnesses on the witness stand and from exhibits and from depositions.

Each of you of course is entitled to your own opinion, but when you go into the jury room to deliberate, you are expected and, in fact, required to exchange views with your fellow jurors and you must deliberate and discuss the evidence and listen to the arguments and reasoning of your fellow jurors, to present your own individual points of view and reach an agreement solely and only on the evidence without violence to your own judgment. You are not to yield, for example, simply because you are outnumbered. You should vote with the others only if you are convinced on the facts and the evidence and the law that it is the correct way to decide the case.

On the other hand, you should not hesitate, if you are convinced by a fellow juror, to change your point of view if it appears to have been erroneous to you.

However, to return a verdict in this case it must be unanimous by all six who deliberate on this question.

Now, I have prepared a special verdict, as I call it, and I will ask the clerk at this time to give the original to the forelady and a copy to each of the deliberating jurors.

Madam Forelady, you have the original now, I believe, and that is the only one that need be signed by

the jurors. The other jurors have one without the third page, which has the space for the signatures. All six must agree on each question.

I think it's clear, but if it is not clear, please write out a note to the Court and the Court will call you in and try to answer your questions.

In addition to that, if you send in a note in writing from your forelady, you may ask for any or all of the exhibits which are in evidence.

Likewise, if you believe it to be reasonably necessary, you may ask the Court to have the reporter read the testimony of any witness or a particular portion of it. I urge you to be as definite as you can when you ask for that.

I want to emphasize this factor. If you do send any notes in, Madam Forelady, do not volunteer any information whatsoever about your deliberations with respect to any proposed verdict. In other words, you should not attempt to tell me how you stand, for example, at any time. But this does not preclude you from asking the Court for an answer to any question which might aid you in your deliberation. As I said, it must be unanimous, all six.

Now you are to retire to deliberate and

deliberate on this verdict of liability, and after that, for the time being, you may have completed your duties here or you may have to perform other duties. But, in any event, I do not order this but I recommend that you do not talk with anyone about your experiences here or what you thought about the case or what you did in the course of your deliberations.

Are there any exceptions, Mr. Klonsky?

MR. KLONSKY: Yes, your Honor.

THE COURT: We will repair to the robing room. The jurors will remain here, the six. The two alternates may get your effects, and so forth, from the jury room and sit down in the rear of the courtroom when you come back out of the jury room.

(In robing room.)

THE COURT: All right, Mr. Klonsky, what is it?

MR. KLONSKY: First, your Honor, in one place of your charge you said that longshoremen should see what was obvious and that the ship has no duty if a danger was obvious.

THE COURT: That is true.

MR. KLONSKY: You also said he should take care for his own safety, to take care of dangers to himself. There is no contributory negligence in this case. If there

is no contributory negligence how could this affect the verdict?

THE COURT: He should still look before he acts.

MR. KLONSKY: If he failed to look and therefore was hurt, that is contributory negligence.

THE COURT: What do you say, Mr. Watson?

MR. WATSON: I don't think the two are necessarily tied together. The fact I have withdrawn the claim of contributory negligence doesn't mean that the plaintiff is free to lollygag around with his eyes shut to what you call obvious conditions.

THE COURT: I have noted your exception.

MR. KLONSKY: You spoke about unavoidable risk is assumed. I object to that. You made a remark to that effect.

THE COURT: I didn't state it that way. I have noted your exception.

MR. KLONSKY: You also said something about equipment, but your voice got lower at that point.

THE COURT: You could have raised your hand and spoken.

MR. KLONSKY: Not while the judge is speaking.

THE COURT: You heard what I said to the jury.

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You could have done it.

MR. KLONSKY: You didn't give me permission to do it.

THE COURT: I didn't have to give you permission.

MR. KLONSKY: I respectfully ask the Court to charge, to clarify what I have just said, that equipment is adopted by the ship as if it were its own and this equipment is related to the stevedoring equipment.

THE COURT: Can you find this, Mr. Page?

MR. KLONSKY: It is about the first third of the charge.

In your recital of the facts, you made mention --

THE COURT: What is it, if you have got it?

MR. KLONSKY: You said there is no proof of the use of tag lines on other vessels.

THE COURT: I said in my memory that was the case.

MR. KLONSKY: I also respectfully ask the Court to note custom is not controlling completely here.

THE COURT: Reasonable preparation.

MR. KLONSKY: And the recitation of the facts was definitely defendant-slanted.

THE COURT: I note your exception. I am not

going to do it over again. I charged them, counselor, you will remember, that they must rely on their own recollection, or refreshed, and I don't have to tell every single thing that was said. Your exception is noted.

MR. KLONSKY: You also mentioned plaintiff claims negligence for the manner of operation of the bridle. We claim there was an unsafe condition, an unprotected precipice.

THE COURT: It was stated as to the unseaworthiness also.

MR. KLONSKY: You made a side remark. You said"What that meant I can't state." That was with respect to the failure to furnish equipment. You said it in those words, "What that meant I can't state," and yet you charged the jury.

THE COURT: What do you want me to say?

MR. KLONSKY: Then why make it part of the charge?

THE COURT: I don't know that there was any statement, just what it was.

MR. KLONSKY: Also, your Honor, with respect to unseaworthiness, you did not mention that cargo unsafe to work upon would make the ship unseaworthy.

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THE COURT: You are complaining about what I said?

MR. KLONSKY: "What that meant I can't state." Those were your exact words.

THE COURT: What did I say before?

MR. KLONSKY: Something about the failure to supply equipment reasonably fit for its purpose. I respectfully submit the jury should be told whether the equipment was the ship's equipment or was the stevedore's equipment or the failure to provide adequate equipment from the stevedore's gear box, it is still the obligation of the shipowner in the first instance.

THE COURT: What do you say to that, Mr. Watson?

MR. WATSON: I think I understand what he meant.

THE COURT: Let's listen. Read Mr. Klonsky's last statement.

(Record read.)

THE COURT: What do you say?

MR. WATSON: I think that is really hitting on two points. I don't think the shipowner can be held liable for the failure of the stevedore to provide equipment. If the stevedore provides equipment which is defective in conjunction -- that is the Patterson-Alaska Steamship case.

MR. KLONSKY: Failure to provide needed equipment could prompt unseaworthiness on a ship.

MR. WATSON: I wouldn't agree with that.

THE COURT: What do you say I should charge?

MR. KLONSKY: I respectfully submit whether the failure to supply or the actual supplying of equipment not reasonably fit for the purpose intended is the stevedore's equipment, nonetheless the ship adopts the failure to provide equipment or defective equipment and must respond in liability.

THE COURT: I suppose this is part of the sole obligation, the sole responsibility.

MR. KLONSKY: Non-delegable, your Honor.

THE COURT: No. I don't know what you are talking about.

MR. KLONSKY: They can't delegate the obligation to provide proper equipment to somebody else.

THE COURT: That may be true, but still, if the sole cause of the accident is the equipment of the stevedore or of the crane operator, or both, or their employees, that eliminates liability from the defendant ship, doesn't it?

MR. KLONSKY: I think what your Honor meant to say is if the sole cause of the accident is the

negligence of the stevedore, but if the sole cause of an accident is the failure to supply equipment, that is the fault of the ship regardless of whose fault it initially is with respect to the stevedoring equipment. You can't say that they adopt the equipment or the failure to supply proper equipment and yet blame it as the sole fault of the stevedore, they adopt that equipment, it is their fault.

MR. WATSON: If the equipment is provided and the equipment is defective, it can render the ship unseaworthy. If the stevedore fails to provide equipment, I don't believe that makes the shipowner liable.

MR. KLONSKY: If that creates a dangerous condition, you can't blame the stevedore for failing to furnish needed equipment, you should supply it. That is what the law says.

THE COURT: You say the shipping company should supply the equipment needed by the stevedore, is that it? I can't go along with it.

MR. KLONSKY: I am not saying they should supply it, but the failure to supply it by someone else is still their failure in the first instance. The failure to supply tag lines which would prevent the man from being on top of the container --

THE COURT: You say the ship is responsible for

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the tag lines? 228A

MR. KLONSKY: For the failure to supply needed tag lines, if the jury feels there should have been.

THE COURT: Under unseaworthiness?

MR. KLONSKY: Yes, your Honor. It is also their obligation to provide a safe place to work.

THE COURT: I said that.

MR. KLONSKY: I respectfully ask on this definition of unseaworthiness you keep in mind the need for cargo operations and the cargo itself as being an item that could prompt unseaworthiness.

THE COURT: What's that again?

MR. KLONSKY: If the cargo is not fit to work upon --

THE COURT: There is no proof whatsoever about the cargo. There even was no testimony as to what was in the containers.

MR. KLONSKY: I am talking about on the top where there were no safety measures.

THE COURT: I charged reasonable protection. There was no proof that it was customary on any ship to put up a rail around a container, on top of a container, counselor. I can't be responsible for lack of proof.

MR. KLONSKY: The definition of unseaworthiness

should contain a reference to the cargo. We claim it was not fit to work upon at that time. That is our contention.

THE COURT: That's out. I took that out.

MR. KLONSKY: On weather, but not other conditions. I showed your Honor the Zinnel case.

THE COURT: Your objection is noted.

MR. KLONSKY: Your Honor, my seventh request --

THE COURT: How many more have you got?

MR. KLONSKY: I am talking about the seventh request. If you believe the fault of the vessel in any respect either by negligence or unseaworthiness combined or concurred with the negligence of plaintiff's co-employees or the crane operator, you must find for the plaintiff without any diminution in damage because of such concurrent fault.

THE COURT: I have already said that the element of contributory negligence is not in the case.

MR. KLONSKY: What you did, your Honor, was give the converse of this and said if the stevedore is negligent and the crane operator is negligent and that is the sole cause, plaintiff cannot prevail.

THE COURT: Isn't that the law?

MR. KLONSKY: Yes, but it is also the law if the shipowner and crane operator concur in negligence.

the plaintiff prevails. That you did not charge.

MR. WATSON: The Court, with due respect, charged, as I recall it, that if the negligence of the shipowner or the unseaworthiness of the ship was the proximate cause in whole or in part on several occasions, and that is what you are asking there.

THE COURT: I charged that.

MR. KLONSKY: I don't think so.

THE COURT: I am now going to have my secretary read my charge, but that is my recollection.

MR. KLONSKY: I think you should refer to the part of the charge which has to do with the equipment where you did not read it -- I think it should come from the reporter rather than from your own notes because the reporter would have the --

THE COURT: How can he find it? I will give him a few minutes but I won't take time and let the jury sit on their tails.

(Pause.)

THE COURT: It is the continuing duty of the defendant -- I am quoting from what I read, I believe -- it is the continuing duty of the defendant to use ordinary care under the circumstances to furnish the longshoreman reasonably safe equipment and a reasonably safe place in

which to work aboard the ship and to use ordinary care under the circumstances to maintain and keep the place of work and th ship's equipment used in carrying on the work in a reasonably safe condition.

I decline to do any changing on that.

MR. KLONSKY: The reporter took it down that way. You are reading from a book.

THE COURT: Are you impeaching him?

MR. KLONSKY: No.

THE COURT: He is an authorized reporter and I am not going to ask him to attempt to read that. That's all, gentlemen.

MR. WATSON: Will the Court note that I have no exceptions to the charge?

THE COURT: Yes.

MR. KLONSKY: I request the withdrawal of a juror at this time, for a mistrial.

THE COURT: Denied, denied, counselor.

(In open court.)

THE COURT: I wish to read two parts of my charge. The first portion relates to the negligence claim. I said, I believe, as follows: It is the continuing duty of the defendant to use ordinary care to furnish the longshoreman with reasonably safe equipment and a

reasonably safe place in which to work aboard the vessel and to use ordinary care under the circumstances to maintain and keep the place of work and the ship's equipment used in carrying on this work in a reasonably safe condition.

And then on another page, with respect to unseaworthiness, I stated I believe: The duty of the ship to provide a reasonably safe place -- I will start again.

Due diligence of the owner in exercising reasonable care does not relieve him of the obligation to furnish a seaworthy vessel and appurtenances reasonably fit for their intended use.

Now, I made some statement to the effect I did not remember the exact details of the specific equipment which was claimed to be improper and inadequate. I think the summary of the facts may indicate what it was. As I recall it, the claim was, I believe, definitely with respect to the tag lines and that area of the bridle. If there is anything else which was mentioned by the witnesses in the proof, that's up to you to determine.

Now you may retire.

Counsel wish to give the exhibits now or let the jurors call for them? Which do you want to do?

MR. KLONSKY: I think they should take them now.

MR. WATSON: That is satisfactory to me, your Honor.

THE COURT: Very well. The clerk will hand the exhibits to the bailiff.

State on the record what they are.

THE CLERK: Plaintiff's Exhibits 1, 2 and 3.

THE COURT: You will recall what I said about repetition of testimony.

(At 3:00 P. M., the jury retired to commence their deliberations.)

THE COURT: I am going to say this to counsel. I no longer require jurors to stay here in the evening in a civil case. I don't think it's necessary. Comes approaching 5:00 o'clock, I am going to send them home with appropriate instructions, and I am going to have the forelady take all the papers and put them in an envelope and seal it and initial it and date it and they will get it back tomorrow morning and then I am going to instruct them not to call up the forelady or anybody else on the jury to discuss the case this evening. I believe that should be satisfactory. I have done that for some years now.

(Recess.)

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(At 4:15 P. M., the following occurred in the robing room.)

THE COURT: I thought they had learned that the foreclady should sign the papers, but they aren't signed. Nevertheless, they are here.

The first heading is: "Question No. 3. Further clarification on the legal point of seaworthiness of a vessel discharging cargo in port."

Then a paragraph down below:

"Request help on definition of what constitutes proper equipment for the discharge of cargo under the circumstances described during the trial in view of the fact that Plaintiff's Exhibit 3 describes four different methods of lifting containers."

There you are, counselor.

MR. KLONSKY: Your Honor at the very beginning pointed out what was in the exhibit was X and the part at the bottom and they were not to consider the other three items on the paper.

Is that correct?

MR. WATSON: Correct. Those were not put in as the proper methods. Those were put in as what were representations of what was being used on this date.

THE COURT: What is that?

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MR. WATSON: What was being used on this particular occasion.

THE COURT: That doesn't answer the question, does it?

MR. WATSON: I don't think the question can be answered. It's up to them based on the evidence that they have heard.

THE COURT: What you are saying, Mr. Watson, is they have to resort to the testimony.

MR. WATSON: I believe that's true, your Honor.

MR. KLONSKY: Isn't the first part of the question related to a definition of unseaworthiness?

THE COURT: I don't think so, not basically. I don't think I should have to go through what unseaworthiness is. If they want it defined, I will have it read, but it is three or four pages. I constantly from year to year try to reduce that definition, and I have never succeeded, Mr. Klonsky.

MR. KLONSKY: There is a point beyond which we can't go.

THE COURT: I am not so certain.

MR. KLONSKY: I do think they are requesting a charge on unseaworthiness.

THE COURT: They want me to tell what is proper

equipment, counselor. That is a silly thing to do, in the first place. How can I do it, in the second place? I am not an expert. I shouldn't be compelled to, in effect, tell them what the equipment must be.

MR. KLONSKY: May I look at the note a minute, your Honor?

MR. WATSON: I think you have to tell them with respect to Exhibit 3, however, that the only parts that were marked as an exhibit were, in effect, the circled part and the part that has an X next to it, and that was merely to represent the type of gear that was used on February 19th.

THE COURT: It doesn't show what is theoretically the best?

MR. WATSON: No. That was not the object of the exhibit.

MR. KLONSKY: The first part of the question 3 says: "Further clarification on the legal point of seaworthiness of a vessel discharging cargo in port."

Then they skip four lines and go on to the other thing.

THE COURT: So what do I do about it?

MR. KLONSKY: I think the part regarding unseaworthiness should be read to them.

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THE COURT: No. 2374

MR. KLONSKY: They request it.

THE COURT: I will say they may request it but I am not offering to do it. They may request the reading of the charge as to unseaworthiness if they wish it, if they don't remember enough of it. I shall tell them what Mr. Watson just said about Exhibit 3.

Is there any other suggestion?

MR. WATSON: I think you might tell them, in response to the second question there, as well, your Honor, that what was reasonable and proper gear for use under the circumstances is up to them to decide on the basis of all the testimony.

THE COURT: Yes.

MR. KLONSKY: That's right.

THE COURT: Okay.

MR. KLONSKY: Yes. But the first part I still say they request a definition of unseaworthiness.

THE COURT: That is a long definition. I will tell them so. It is now almost half past four. I guess any reading of that should be adjourned until tomorrow. I am not going to stay here and hold them here. I shouldn't. It gets dark. There are five women out there on the jury.

MR. KLONSKY: Four.

THE COURT: In view of things that go on these days, I am reluctant to ask them to stay. Well, I will go out and do what I can and consult with you before I dismiss them.

(Open court; Jury present.)

THE COURT: Now, Madam Forelady and members of the jury, I suggest, Madam Forelady, the next time you sign the question. It's a small matter but you are a forelady and I expect any message cominging in to be signed by you.

I read the first item. "Question No. 3. Further clarification on the legal point of seaworthiness of a vessel discharging cargo in port."

There are two phases of that. One, I suppose, is what is unseaworthiness. It's late in the afternoon and I am going to send you home in a few minutes. However, if you send me a note the first thing in the morning after you reconvene and you want the charge as to unseaworthiness given, I shall have the reporter read it. I don't think it's necessary, but I shall do it if you think it's necessary. It takes I don't know how long. It is five or six pages.

The second paragraph says: "Request help with the definition of what constitutes proper equipment

for discharging cargo under the circumstances described during the trial."

There are no particular circumstances. Certainly, as I told you, the question of the weather is out of this case. You are not to be concerned with that.

The other circumstances relate to the fact that there were two containers used and you have the dimensions of them. I recited it from the evidence. So you have that.

Frankly, I don't know how you can secure any information about the proper method unless it is contained in the testimony. You heard the testimony and I can't tell you. I indicated some uncertainty about that during my charge. If it isn't there, I don't know what to tell you. If it isn't there, I don't know where it is and there is no place from which I can draw it. This isn't a matter such as can be taken out of some book there may be that someone could testify about that, but as far as I know, I don't know how much testimony. You will have to recall that. If there is any testimony about what is a proper method, then you may consider that testimony.

So I think the best thing now, unless you want to deliberate ten or fifteen minutes more, is to go home.

MR. WATSON: Your Honor, were you going to make a comment about that Exhibit 3?

THE COURT: Yes, I was.

I also instruct you about Exhibit 3. This was taken under certain arrangements between counsel. There is an X here, as you may have seen, opposite "Top Lift Semi-Automatic By Means of Spreader Twist Locks."

There is nothing in here about what is the proper method. This is just an explanation, I take it, Mr. Watson and Mr. Klonsky, of what the arrangement was on the actual occasion.

Am I right, Mr. Klonsky.

MR. KLONSKY: Yes, your Honor.

THE COURT: And Mr. Watson?

MR. WATSON: Yes. Mr. Canales identified that as the type of gear that was being used at the time. One of them is circled and the other has an X opposite it. The rest of the exhibit is irrelevant.

THE COURT: What is this "b" down at the bottom?

MR. KLONSKY: "a" and "b" are the two ropes used to lock.

THE COURT: Were they the ones used in the actual performance?

MR. KLONSKY: Yes.

THE COURT: I can't tell you anything else. If you have any more questions, send them in in the morning.

Do not commence to deliberate until all six are here, and overnight I want you -- the clerk will give you a big envelope, Madam, and will you collect all of the papers from the other jurors and put them in the envelope, seal the envelope and initial it and date it and pick it up in the morning. Do not start your deliberations until all six of the present jurors are here. Leave all the exhibits here with the clerk.

One further bit of instruction. Heed to my previous instructions. Don't talk to each other over the telephone or otherwise. Let the matter go over until you start deliberation again tomorrow morning at 10:00 o'clock.

I think I have covered this for the time being, gentlemen, Mr. Watson and Mr. Klonsky, as best I can. I will ask counsel to remain just a minute after the jury leaves.

Now you may go and get your hats and coats. Come back at a little before 10:00 tomorrow morning.

I want to ask counsel something.

GW48

2424

(Jury leaves courtroom.)

THE COURT: Gentlemen, I have no information which you do not have with respect to what the jury is thinking or doing, but frequently an arrangement to take a verdict from five jurors only results in a quick verdict. I had one where in ten minutes there was a verdict back.

Think about it and if you want to adopt that proposition, tell me in the morning.

cxx (Court's Exhibit 2 marked for identification.)

(Adjournment to 10:00 A.M., December 3, 1975.)

GW49 43A

RIDEL C. REVILLA

-against-

AMERICAN EXPORT ISBRANDTSEN LINES, INC. 70 Civ. 2583

-against-

PITTSTON STEVEDORING CORP. and
HOFFMAN RIGGING AND CRANE COMPANY

New York, New York
December 3, 1975
10:05 A. M.

Before: HON. RICHARD H. LEVET, D. J. and a jury.

- - -

(In open court, jury not present.)

THE COURT: I don't know exactly how I left it with the jury yesterday evening as to whether I would read or wait for them to ask to have the charge on unseaworthiness repeated. Mr. Klonsky would like to have the -- I suggested that I read it, but I am not seeking to exercise my voice unnecessarily. Mr. Klonsky wants to have it read by the reporter. I have no objection to that. So I will do that and I will ask the clerk to get --

THE CLERK: We are missing one.

THE COURT: One juror is still missing. Always one late. I will have them come in and I will state that I will ask the reporter to read it. I indicated where he is to start.

Is there any change in the position as to

GW50

telling the jury that five votes may be sufficient, gentlemen? Who was still on the fence on that?

MR. WATSON: I said I wanted to think it over, your Honor. I have done my thinking, and I would approve of five.

THE COURT: How about you, Mr. Klonsky?

MR. KLONSKY: I wouldn't, your Honor.

THE COURT: You might save an awful lot of time waiting around for the jury if you would. I have seen it happen many times. Usually in about ten minutes. I don't say that's so in this case. I can't prophesize. I don't know any more than you. If there is one lone wolf, a stipulation will solve it.

Very well, we will do it the long way. You can sit around here all day as far as I'm concerned.

(Pause.)

(The jury entered the courtroom.)

THE COURT: Good morning, members of the jury. I think it was number five who was late. Is that correct?

JUROR NO. 5: Yes, sir.

THE COURT: Was there train trouble?

JUROR NO. 5: Yes, sir.

THE COURT: Well, you can't help that.

Yesterday apparently your note inquired about

a repetition of the definition of unseaworthiness, and I have asked the reporter to find it and he will read it with respect to the claim of unseaworthiness.

(Record read.)

THE COURT: All right, I think we have covered it, gentlemen. Very well. Now you may retire and continue your deliberations.

(At 10:20 A.M., the jury retired to continue their deliberations.)

MR. KLONSKY: Thank you, your Honor.

THE COURT: Very well. We will wait and hope.

(Recess.)

(At 11:10 A.M., in open court, jury not present.)

THE COURT: We have a note from the jury that they have reached a verdict.

THE CLERK: Court's Exhibit 3, your Honor.

xxx (Court's Exhibit 3 marked for identification.)

(The jury entered the courtroom.)

THE COURT: You may call the roll.

(Jury roll call.)

THE CLERK: Madam Forelady, have the jurors agreed upon a verdict?

THE FORELADY: Yes, they did, your Honor.

THE CLERK: You will have to read these answers

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to me, Madam Forelady.

How do you find to question number one?

THE FORELADY: The answer to question number one is No.

THE CLERK: How do you find to question two?

THE FORELADY: The answer to question number two is No.

THE CLERK: How do you find as to question number three?

THE FORELADY: The answer to question number three is No.

THE CLERK: Ladies and gentlemen of the jury, listen to your verdict as it stands recorded. You say you find to question number one a verdict of No; to question number two a verdict of No; to question number three a verdict of No, and so say you all.

THE COURT: Poll the jury.

THE CLERK: Yes, your Honor.

(The jury was polled and answered in the affirmative.)

THE CLERK: The jury is polled, your Honor.

THE COURT: Let me see the original verdict.

(Handed to Court.)

THE COURT: The original verdict is as read

GW53

and the jurors have all signed, all six. 237A

Very well. You are excused, members of the jury, with thanks for your attention in this matter. You are now to go back --

THE CLERK: To the central jury room.

THE COURT: Send the alternates, too.

THE CLERK: All return to the central jury room, please.

MR. KLONSKY: Your Honor, would this be an appropriate time to make motions?

THE COURT: If you have a motion.

MR. KLONSKY: I have a motion to set the verdict aside as against the weight of the evidence.

THE COURT: Denied.

MR. KLONSKY: Judgment non obstante veredicto.

THE COURT: Denied.

I want the clerk to enter a judgment for the defendant with costs.

While we are waiting, if you want to settle this claim-over, Mr. Watson, you can take it up. If you want a trial on it, both sides want a trial, I will take whatever proof is available now.

MR. WATSON: Your Honor, at this stage and in view of the jury verdict, the only matter which could be

GM54

covered --

THE COURT: Attorneys' fees. 2384

MR. WATSON: -- would be attorneys' fees. I would like a chance to talk that over with counsel for the two third party defendants.

THE COURT: I will wait a little while. Let's do something this morning, if it's possible and we can do it. If not, I will set another time.

MR. WATSON: Thank you, your Honor. I will take a few minutes.

THE COURT: Very well. Thanks to all counsel for your efforts to expedite this case. The court is recessed.

- - -

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Angel Canales	23	49	56	
Rafael Martinez	60	75	85	
Walter F. Zeltmann	86	98	105 109	107
Ridel C. Revilla	114	122		

EXHIBIT INDEX

Plaintiff	Identification	In Evidence
1	23	24
2	23	24
3	37	40
4	87	88

Court	
1	158
2	231
3	234

A 250 Plaintiff's exhibit 1

Log of the S. S. M. V. SEA WITCH from

Time	Wind	Courses			Standard Comp.		Barometer	Temperature		Water		Remarks
		True	Mag.	Deviation	Var.	Dev.		Air	Water	Sounds	Feet	
	Day begins overcast						29.98	54		N		
1200	RAIN						29.71	44				

Latitude	Longitude	Course	Distance	Remarks

Day ends

Day ends

Day ends

at Port Newark - Starboard side - Shore [illegible]
New Jersey

0000 [illegible]

Ships [illegible]

0800 [illegible]

0900 - [illegible]

1145 - [illegible]

[illegible]	[illegible]

1245 [illegible]

1300 - [illegible]

1545 [illegible]

1550 [illegible]

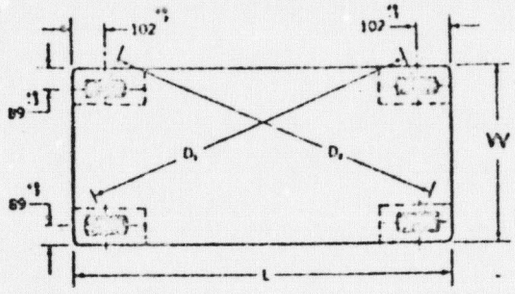
[illegible]

Plaintiff's Exhibit 3

6 ISO RECOMMENDATIONS

251A

Corner Fitting to Container Relationship



Top or Bottom Planes

L= Length of container measured over end (outer) faces of corner fittings to which container length tolerances are applied, resulting in maximum permissible length, L max; and minimum permissible length L min.

W= Width of container measured over side (outer) faces of corner fittings to which container width tolerances are applied, resulting in maximum permissible width, W max, and minimum permissible width, W min.

D= Distance between centers of apertures of diagonally opposite corner fittings resulting in 2 dimensions, D_1 and D_2.

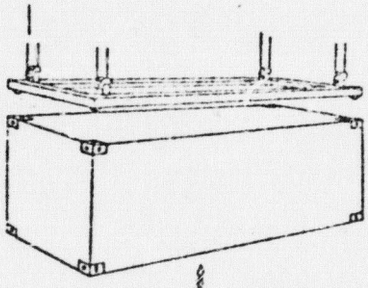
K= difference between D_1 and D_2; i.e. $K = D_1 - D_2$ or $K = D_2 - D_1$.

Dimensions in millimeters

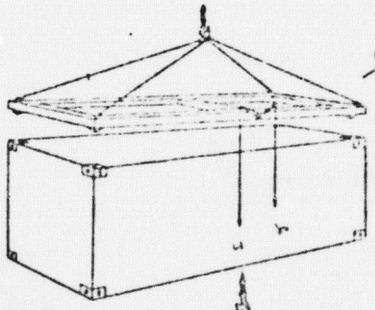
Container Designation	L		W		K
1A	12190	+2 -8	2435	+3 -2	19
1B	9125	+6 -10	2435	+3 -2	19
1C	6055	+3 -3	2435	+3 -2	19
1D	2990	+1 -4	2435	+3 -2	10

ANNEX A

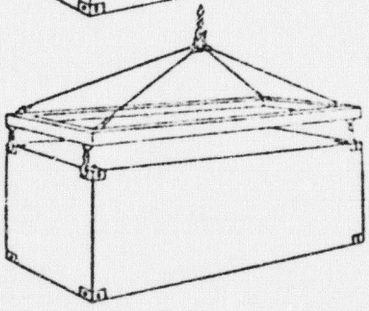
EXAMPLES OF METHODS OF LIFTING CONTAINERS BY CORNER FITTINGS



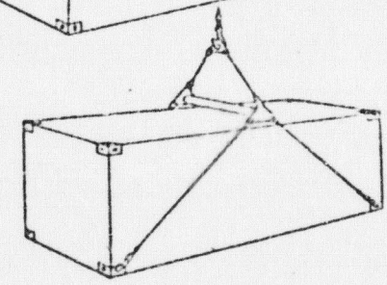
Top lift automatic by means of spreader twist locks



Top lift semi-automatic by means of spreader twist locks

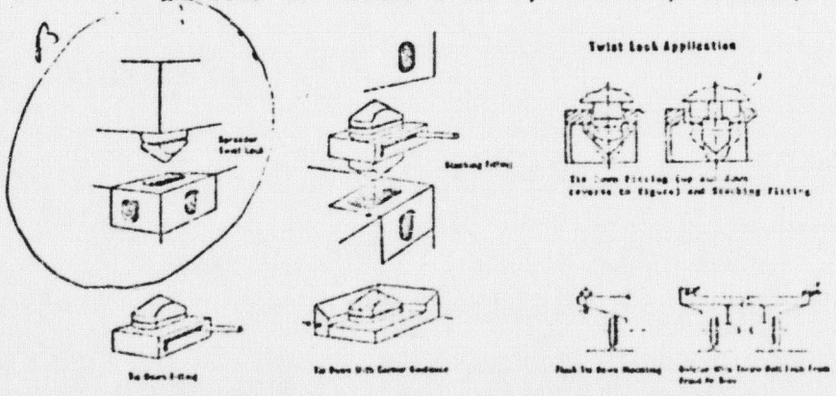


Top lift manual by means of hooks or clevis



Bottom lift by means of slings

EXAMPLES OF CORNER FITTING, ENGAGING, LIFTING, AND SECURING DEVICES



Copy

73-4907 Bee DW

U.S. DISTRICT COURT
FILED
JUN 2 1975
S.D. OF N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RIDEL C. REVILLA,

Plaintiff,

-against-

AMERICAN EXPORT ISBRANDTSEN LINES, INC.,

Defendant and Third-Party Plaintiff,

-against-

PITTSTON STEVEDORING CORP. and HOFFMAN RIGGING & CRANE CO.,

Third-Party Defendants.

#42509

70 Civ. 2583 (JMC)

FILE COPY
HAIGHT, GARDNER, POOR & HAVENS
ONE STATE STREET PLAZA NEW YORK
ENTERED
JUN 3 1975

MEMORANDUM AND ORDER

CANNELLA, D.J.:

Unlike fine wines, longshoremen's personal injury actions do not mellow with age. This litigation was commenced in 1970 to recover damages for a 1969 injury and it is rapidly becoming a case of rare vintage. It was made a part of the so-called "crash program" to dispose of ancient cases and it was marked ready for trial several months ago. This notwithstanding, plaintiff has now moved "for an order to permit a direct cause of action against the third-party defendant Hoffman Rigging & Crane Co."

The motion is apparently premised upon Fed.R.Civ.P. 14(a) which provides that a "plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff...." Undoubtedly, the claim now sought to be asserted comes within the purview of the rule, however, we find that it is now too late in the ballgame for its assertion.

Hoffman was joined as a third-party defendant in September 1972 and the plaintiff has offered no reason or excuse for his not having attempted to assert a direct claim against it sooner. Now, on the eve of trial, first by "notice" and presently by motion, plaintiff asks that we permit him to assert this direct claim. Equity and good conscience do not allow us to exercise our discretion in support of such a perversion of orderly procedure.

Procedurally, the above-noted provision of Rule 14(a) is effected by means of an amendment to the pleadings under Fed.R.Civ.P. 15. 3 J. Moore, Federal Practice ¶ 14.16[1] at 14-376 (2 ed. 1974). Rule 15(a), in turn, directs that leave to amend "shall be freely given when justice so requires." However, undue delay in seeking such leave is well recognized as a criteria favoring

denial of the motion. 3 J. Moore, supra ¶ 15.08[4] at 898. The plaintiff's delay in making the instant request, when coupled with its prejudice to Hoffman and the further delay of the trial of this cause which it would work, persuade us to deny the motion. See, Howey v. United States, 481 F.2d 1187 (9 Cir. 1973); Middle Atlantic Utilities Co. v. S.M.W. Development Corp., 392 F.2d 380 (2 Cir. 1968). Hoffman has spent almost three years preparing this case with an eye toward only the third-party action and it has not attempted to conduct discovery or invoke other pretrial procedures with regard to the plaintiff's claim. To allow the amendment and yet move this case to trial, as we must now do, will clearly prejudice Hoffman and will do so without plaintiff having advanced any sound reason for his not having long ago sought that which he now seeks.

Mr. Justice Cardozo recognized "the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." Landis v. North American Co., 299 U.S. 248, 254 (1936). Such inherent authority, as well as the sound discretion vested in the district court by the Federal Rules of

Civil Procedure, are well invoked on the present motion and compel that it be

Denied. SO ORDERED.

/s/ John M. Cannella

JOHN M. CANNELLA
United States District Judge

Dated: New York, N.Y.
June 2, 1975.

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256A Levet, J.

U.S. DISTRICT COURT
FILED
DEC 8 1975
S.D. OF N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RIDEL C. REVILLA Plaintiff	:	70 Civil 2583 (RHL)
-against-	:	JUDGMENT
AMERICAN EXPORT ISBRANDTSEN LINES, INC. Defendant	:	

The issues in the above entitled action having been brought on regularly for trial, before the Honorable Richard H. Levet, United States District Judge, and a jury, on December 1,2 and 3, 1975, and the Court having submitted the attached special questions to the jury, and the jury having answered the said questions, and the jury having returned a verdict in favor of the defendant, it is,

ORDERED, ADJUDGED and DECREED: That defendant AMERICAN EXPORT ISBRANDTSEN LINES, INC., have judgment against plaintiff RIDEL C. REVILLA, dismissing the complaint, with costs to be taxed.

The third party action will be decided by the Court.

Dated: New York, N.Y.
December 5, 1975

Raymond F. Burghardt
Clerk

APPROVED:

Richard H. Levet
U.S.D.J.

CLERK'S OFFICE

2074A

At a Stated Term of the United States District Court for the Southern District of New York, held in the United States Court House in the Borough of Manhattan, City of New York on the first day of December in the year of our Lord, One Thousand Nine Hundred and Seventy five.

PRESENT:
HONORABLE: Richard H. Levet
United States District Judge.

RIDEL C. REVILLA
- vs -
AMERICAN Expert Isbrandtsen Lines, Inc,
- vs -
Pittston Stevedoring Corp. and
HOFFMAN Rigging and Crane Co.

Docket No. 70 Civ 3583

Now comes the Plaintiff by DiCostanzo, Klonsky & Cutrona, by: Robert Klonsky (Chmn. Exp.)
and moves the trial of this cause. Likewise comes the Defendant by Wright, Gardner, Doe & Havens, by - David H. Watson, (Pittston) by - Fogarty, Nulsen McLaughlin & Spink, by - James D. Hockett ~~Kip Cassatt~~, (Hoffman Co.) by - Hill, Betts & Nash, by - Robert Blanc. and Gregory Welch.
Thereupon a Jury is duly empaneled and sworn, and the cause proceeds to Trial. DEC 1 1975
Split Trial, Claim over to the Court. S. Cp. Rest.
Def. Motion to dismiss, Lack of proof, Motion reserved. Levet, J.
DEC 2 1975 Trial continues. Judges charge, 2:10 p.m. - 2:45 p.m.
DEC 3 1975 Trial continues. Jurors continue Deliberations.
Jury verdict at 11:30 a.m. See special verdict form attached
Court directs clerk to enter a Judgment in favor
of the defendant together with costs.
Levet, J.
Trial Concluded.

(AN EXTRACT OF THE MINUTES) Clerk

FOLEY SQUARE, NEW YORK, N.Y. — 791-1020

Clerk's Copy

RAVILLA V AMERICAN EXPORT ISBRANDTSEN LINES 70 Civ 2583

1. Has plaintiff proved by a fair preponderance of the credible evidence that the defendant shipowner was negligent in permitting cargo to be discharged in a hazardous manner, with respect to operation of the bridle, from the deck of the C/V SEAWITCH on February 19, 1969, and that such negligence was a proximate cause, in whole or in part, of an accident sustained by plaintiff on February 19, 1969?

YES ___ NO X

Go on to question 2.

2. Has plaintiff proved by a fair preponderance of the credible evidence that continued negligent conduct (that is, other than a single isolated act of negligence) of any persons engaged in the discharge of container cargo from the deck of the C/V SEAWITCH on February 19, 1969 created a condition of unseaworthiness and that such unseaworthiness was a proximate cause, in whole or in part, of an accident sustained by the plaintiff on February 19, 1969?

YES ___ NO X

Go on to question 3.

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3. Has plaintiff proved by a fair preponderance of the credible evidence that at about 4:15 p.m. on February 19, 1969, the C/V SEAWITCH was unseaworthy because of any failure of the defendant shipowner to provide proper equipment which was reasonably fit for the purpose of discharging cargo and that such unseaworthiness was a proximate cause, in whole or in part, of an accident sustained by the plaintiff on February 19, 1969?

YES ___ NO X

SIGN THE SPECIAL VERDICT ON THE LAST PAGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RIDEL C. REVILLA,

Plaintiff,

-against-

AMERICAN EXPORT ISBRANDTSEN LINES, INC.,

Defendant and Third Party Plaintiff,

-against-

PITTSTON STEVEDORING CORP., and HOFFMAN HOISTING AND CRANE CO.,

Third Party Defendants.

NOTICE OF APPEAL

70 CIV. 2583 (MEL)

S I R S : -

Notice is hereby given that plaintiff appeals to the United States Court of Appeals for the Second Circuit, from the judgment entered against plaintiff, in favor of defendant on the Eighth day of December, 1975.

DATED: Brooklyn, New York
January 7th, 1976

YOURS, etc.,

DI COSTANZO, KLONSKY & GUTRONA, P.C.
Attorneys for Plaintiff
66 Court Street
Brooklyn, N.Y. 11201
875-0155

TO:

The Clerk of the
United States District Court
Southern District of New York
Foley Square
New York, N.Y. 10007

Haight, Gardner, Poor & Havens, Esqs.
One State Street Plaza
New York, N.Y.

Fogarty, McLaughlin & Semel, Esqs.
10 Rockefeller Plaza
New York, N.Y. 10020

Hill, Betts and Nash, Esqs.
One World Trade Center
Suite No. 5215
New York, N.Y. 10048

Service of 1 copies of this within
Appendix is admitted this
29 day of March 1976.

Fogarty McLaughlin & Semel
ATTORNEYS FOR Hilton Hotelcorp

COPY RECEIVED
1:00 P.M.
HILL, BETTS & NASH

1976 MAR 29 PM 12:29

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